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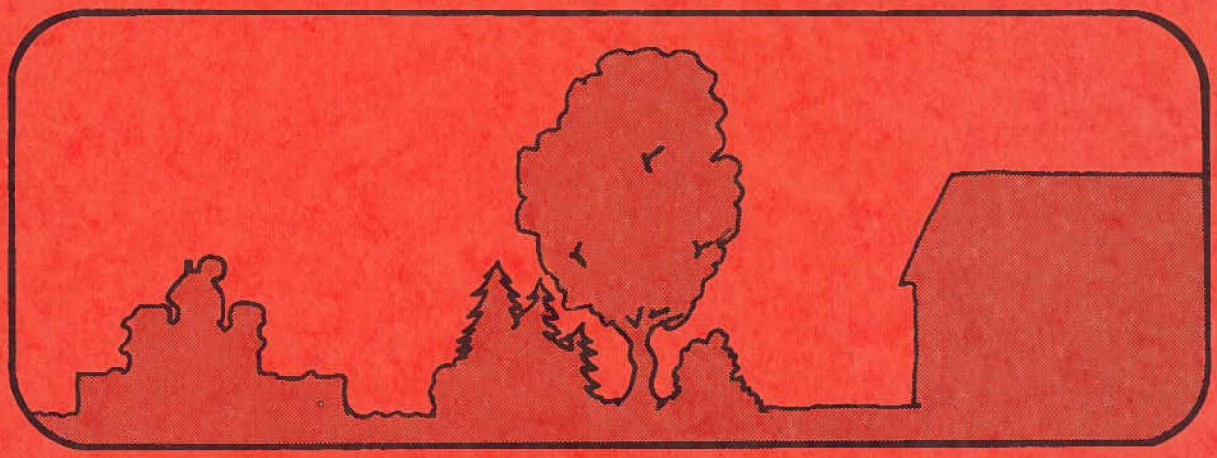
Alternative Techniques for Controlling Land Use: A Guide for Small Cities and rural Areas in California

Institute of Governmental Affairs

ALTERNATIVE TECHNIQUES



FOR CONTROLLING LAND USE

A Guide for Small Cities and Rural Areas in California

IRVING SCHIFFMAN

INSTITUTE OF GOVERNMENTAL AFFAIRS
University of California
Davis, California 95616
January 1983

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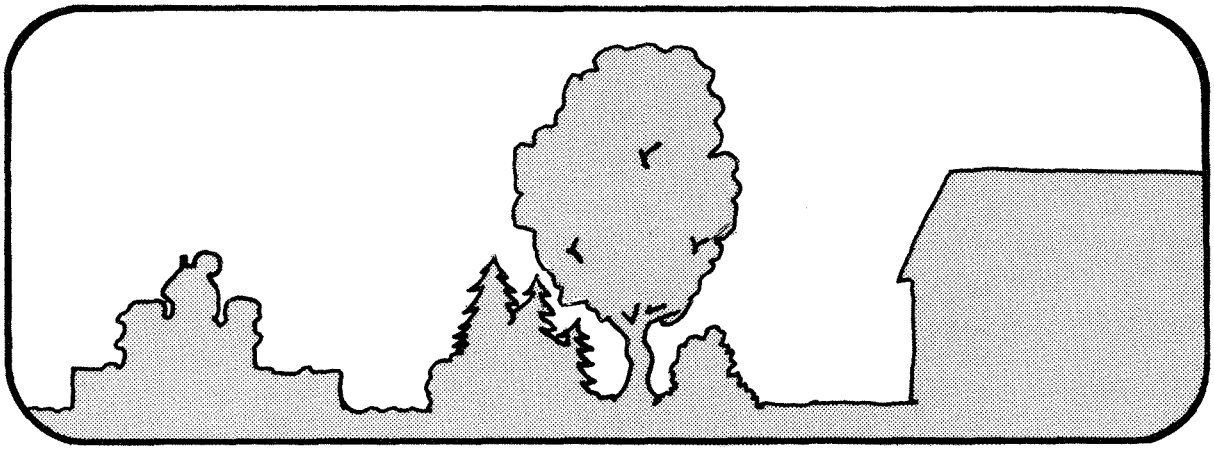

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PREFACE

The purpose of this guidebook is to introduce local government officials and planning commissioners to some of the growing number of alternative techniques available to implement community planning objectives. "Alternative techniques" refers to implementation tools not generally included in a city's or county's land use management programs of the small towns and rural jurisdictions for which this guidebook was written. It is hoped that by describing, explaining, and referencing the alternative techniques presented we can help these communities acquire the planning tools that will assist them in successfully dealing with the diverse array of land use related issues certain to confront them in the coming years.

Among the 21 techniques about which information is provided in this guidebook are variations of traditional regulatory mechanisms, policy and assessment tools, land acquisition approaches, and incentive measures. These were selected on the basis of their ability to aid in the solution of the land use problems confronting small cities and rural areas in California. For each technique the guidebook provides a full definition: a review of the way in which the technique is implemented; a discussion of its potential benefits and limitations and its legal status in California; an examination of its interrelationship with other alternative approaches; and a report on the experiences other communities have had with it. The last section of the guidebook includes information on obtaining assistance in developing and implementing the described techniques and lists additional materials that should be helpful to officials and planning commissioners considering alternative technique approaches.

Although this guidebook is primarily directed toward officials and planning commissioners in California, its relevance and anticipated use are much wider. Most if not all of the land use difficulties experienced by California communities are to varying degrees shared by small cities and rural areas in other states as well. While the planning laws and procedures in these states may differ from those of California, the techniques elaborated in the guidebook can probably be applied in a similar or modified fashion in the great majority of American jurisdictions. Moreover, whether or not any of the listed techniques is appropriate for a particular locality, the guidebook will have succeeded in its purpose if it encourages local decisionmakers to reexamine the land use planning and control methods presently in use in their communities and to consider the adoption of new and imaginative means to implement their planning objectives.

A draft edition of this guidebook was prepared with funds made available through a grant from the Intergovernmental Personnel Act of 1970; it was published in January 1982 by the Northern California

Institute of Local Government, California State University, Chico. That edition was presented for discussion at a series of workshops attended by local officials and planning commissioners throughout Northeastern California. In general, participant response confirmed the relevance of the selected techniques to the solution of local planning problems. This final edition has profited greatly from the comments--and in some cases detailed criticisms--of workshop participants.

INTRODUCTION

ALTERNATIVE TECHNIQUES FOR CONTROLLING LAND USE

by Irving Schiffman*

INTRODUCTION

THE RURAL AND SMALL TOWN CHALLENGE

The 1980 census confirmed what preliminary reports, scholarly research, newspaper articles, and personal observations have been telling us since the early 1970s: rural and small town America has been rediscovered. Non-metropolitan growth rates now exceed metropolitan rates. Between 1970 and 1980, population in metropolitan areas increased by 9.8 percent, compared to a 15.9 percent increase in non-metropolitan growth. The farm population in rural areas has stabilized, while newcomers are moving into rural regions to retire, to enjoy second homes, to seek employment opportunities, or merely to get away from life in the big cities.

Within California, population growth has begun to spill inland into the Great Valley, moving east and north from the crowded, expensive coastal centers. The fifty counties north of the Tehachapi Mountains are growing faster than the eight counties of Southern California, even though both the city and the county of San Francisco actually lost population. Statewide, while the large counties continue to record the largest numerical increases, the fastest-increasing counties by percentage are all rural. Within these counties, a majority of the new residents have settled in unincorporated communities rather than in the established cities.

The increased migration into small towns and unincorporated rural areas has brought with it additional demands on the affected local governments and presented them with challenges that directly address their capacity to govern. Management capability is being tested in such areas as services delivery, personnel administration, citizen participation, fiscal affairs, and the planning and control of land. Even communities that have experienced little growth have been touched by these challenges. As an example, developing communications networks, including television and improved transportation, have changed the values and aspirations of citizens in localities large and small and

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*Irving Schiffman is a professor of political science at California State University, Chico.

contributed to the presence of a more sophisticated constituency. The people in a community of 1,500 may expect to have access to a library just as much as those in a larger city. Such phenomena, combined with a steady stream of policy directives from the state level, serve to increase the complexity of government and force local decisionmakers to reexamine long-time policies and administrative practices.

Of the many challenges with which rural governments are faced, the task of planning and controlling land resources is among the most important. Communities chart their destinies by means of the land use policies they follow. Land use decisions made today generate physical, social, and economic impacts that last far into the future. Moreover, the land management effort is difficult as well as controversial. Intervention in land use has never been easy to sell in rural areas where a laissez-faire attitude toward property rights has been a long tradition. Nonetheless, local decisionmakers must deal with such responsibilities as: regulating growth to assure that its benefits to the locality are maximized while its costs are kept to a minimum; facilitating the provision of housing opportunities for all elements of the community; assuring that economic development is compatible with resource conservation; protecting agricultural productivity against the threat of urban expansion; and maintaining a sense of responsiveness and fairness throughout the decisionmaking process.

In many instances rural governments are forced to deal with these issues with limited assistance. Planning staffs are generally small or nonexistent and little money is available to hire consultants or develop the needed data base. A major participant in the land management process, the lay planning commission, must wrestle with complex technical information while making--often without realizing it--delicate trade-off judgments between developmental and preservationist demands. The local legislative body, also lacking in expertise, exercises its decisionmaking authority in a charged political environment in which concrete short-term interests compete with intangible planning considerations. Nonetheless, and perhaps unfairly, if it appears that local governments are unable to deal effectively with their land use problems, we can expect heightened activity at the state level and rising demands that the state take a more active role in local land use decisionmaking.

THE NEED FOR ALTERNATIVE TECHNIQUES

There can be little argument with the assertion that if local governments are to meet the planning needs of the 1980s they must have the tools necessary for the task. What is arguable is whether present land use control techniques are sufficient to deal with present-day issues. The major tool of land use control--conventional zoning--has been in use since the early 1900s. The issues it was designed to deal

with then are in many ways different from the issues facing communities today. Many observers have questioned the effectiveness of traditional zoning in implementing such goals as protecting environmental values, saving agricultural land, providing alternative and "affordable" housing choices, preserving community character, and managing community growth. Conventional zoning, they feel, has largely failed to meet these new demands. It establishes a relatively fixed approach to land use design while the development factors affecting the public and of concern to them continue to change; it provides minimal health, safety, and welfare standards, but it does not provide the flexible approaches--the alternative techniques--needed by decisionmakers when new issues arise.

The purpose of introducing alternative techniques, however, is not to replace conventional zoning; there remains an important role for that implementation tool, particularly in established residential areas and exclusive agricultural districts. Rather, beyond the limitations inherent in conventional zoning, there are a number of positive reasons why localities might wish to add alternative land use control techniques to their plan implementation programs.

Adoption of alternative techniques enables communities to expand the scope of their planning process. A plan can be only as imaginative or effective as the tools available to carry out its objectives. The greater the assortment of implementation techniques from which a community can choose, the more creative planners can be and the greater the likelihood of attaining the desired ends. For example, an awareness of the techniques of planned unit development and cluster development expands the ways in which a locality can fulfill its plan objective to "encourage good design and a mixture of housing types in residential development." Similarly, community familiarity with the techniques of urban area boundaries, sphere of influence designation, agricultural use notice, agricultural buffers, and fiscal impact analysis allow local planners to consider a variety of approaches that, working in concert, can promote the complementary objectives of limiting the extension of urban services and providing greater protection for farming operations.

Adoption of alternative techniques assists the community in resolving conflicting citizen demands. The greater the number of techniques from which a community may choose, the easier it may be to effect compromises among conflicting interests. The urban migration into rural areas has not only brought with it increased growth pressures, but has ignited or enhanced conflicts concerning how land is to be used and how the locality is to develop. In a number of instances, long-time residents who had previously thought little about planning find themselves looking to the planning process to "slow things down" or at least provide some direction for the new development. The conflicts that arise are frequently expressed in terms of economic development versus community preservation, farming practices versus urban expansion, and rural housing opportunities versus open space and the protection of natural resources. Where a community has available

alternative planning techniques, the planner is better prepared to discover the approaches necessary to gain agreement among the disputing groups. For example, the establishment of environmental performance standards can serve to minimize concern over the development in fragile areas; the incentive of a land trust may ease the concern of farmers over estate tax penalties which may be pushing them toward decisions to develop; and the combination of design standards review, cluster development, and zero lot line housing can encourage good design while reducing the cost of single-family housing.

Adoption of alternative techniques assists the community in dealing with fiscal restraints. A significant challenge for the managers of rural and small town governments is the question of how to provide the variety of services that citizens have come to expect with the limited financial resources available. This challenge becomes greater in an era in which property taxes are reduced in response to public demand while the demand for services remains high. Meanwhile, the impact of inflation increases the cost of providing these services. In such circumstances it makes more than good sense for local officials to ensure that planning policies do not add unnecessarily to the cost of government, particularly when such decisions (involving the timing, location, design, and terms of development) will determine much of a locality's annual and capital budget for years to come. This legitimate concern with the public costs and revenues generated by new development requires that community decisionmakers explore those techniques and solutions--such as fiscal impact analysis, capital improvement programming, and urban area boundaries--which have been adopted by other jurisdictions similarly affected by the rising cost of delivering essential services.

Knowledge of alternative techniques enables planning commissioners to anticipate and encourage innovative development proposals. Recent years have seen a growing sophistication on the part of developers as they seek to respond to the changing demands of the housing market. In many communities developers have sought to introduce new techniques such as planned unit development, cluster development, zero lot line housing, and modification of design standards. Many of these approaches encompass smaller lots, higher densities, and fewer detached houses. Frequently, planning commissioners and local officials treat such proposals with suspicion or reject them out of hand because of their own unfamiliarity with them. Proposals that differ greatly from previously implemented approaches, even when accepted, may be treated in a restrictive manner in an effort to effect minimal change in the community. In many cases, however, a greater awareness of and positive attitude toward innovative proposals would enable community decisionmakers to work with developers in order to change the development pattern and expand the housing opportunities available to their constituents.

Alternative techniques have a solid basis in state planning law. Land use control techniques find their legal justification in the police

power, that is, in the authority of governments to promote the health, safety, and welfare of their citizens. In California the police power is delegated to cities and counties by the state constitution, and the state zoning law sets forth the minimal standards that counties and general law cities must observe in zoning practice. Under this arrangement, communities in the state have great latitude in making and implementing their land use plans and policies. The nine required and the additional optional elements of the local general plan indicate the broad range of issues with which the state legislature believes local government should deal; the state Office of Planning and Research and the Department of Housing and Community Development, through their guidelines, reports, and workshops, have encouraged communities to deal with these issues in an innovative manner.

The California Supreme Court has also played a major role in facilitating the ability of local governments to respond to public concerns over safeguarding the environment; preserving community amenity and character; and protecting scenic, historic, and agricultural resources. The court has given an expansive interpretation to the concept of the "public welfare" to include economic, esthetic, and environmental considerations. But the constitutional prohibition against the "taking" of property "without due process of law" has received a far more narrow reading. As a result, government regulation of land that is reasonable (i.e., non-discriminatory and not depriving the landowner of all reasonable use of his property) and in pursuance of a proper legislative goal (i.e., responding to a legitimate planning concern) will be upheld.

The California Supreme Court recently extended the legal protection offered to local governments that utilize innovative planning techniques. In holding that a judgment for *money damages* not be available in cases involving government regulation of private land, the court declared that:

> [c]ommunity planners must be permitted the flexibility that their work requires....This threat of unanticipated financial liability will intimidate legislative bodies and will discourage the implementation of strict or innovative planning measures in favor of measures which are less stringent, more traditional, and fiscally safe. [*Agins* v. *City of Tiburon*, 153 Cal. Rptr. 224, 1979]

Thus, planning decisionmakers in California should carefully question advisors who say, "I think it is unconstitutional," or "I don't think you can do that." While it is necessary to proceed with some caution in order to avoid the expense of litigation wherever possible, if opponents cannot produce a decision from a California court that prohibits an action that seems advisable, planners should consider trying it.

ALTERNATIVE TECHNIQUES IN THE PLANNING PROCESS

Implementation techniques are tools used for the purpose of carrying out specific community objectives; they are not to be used in a vacuum. Rather, they must be carefully integrated into the general plan of the locality to ensure that: (a) their use serves to further community policies, (b) they do not work at cross purposes from other plan objectives, and (c) they are understood and accepted by local residents. In addition, planning is an essential prerequisite to the adoption of techniques that call for the exercise of discretionary judgment. To limit arbitrary decisionmaking in such areas as planned unit development or performance zoning, the policies and objectives to be achieved must be clearly stated; negotiations between planning commissioners and developers must take place within the framework of declared community expectations concerning the design, place, and timing of development.

Essential to the planning process is, of course, the formulation of goals and objectives. By *goal* is meant a broad, general statement that reflects community consensus regarding the ends toward which planning efforts are to be directed. An *objective* is a clear, well-defined statement of the specific things that need to be done to achieve the ends declared in the goal. An *implementation* technique is the specific law the city or county must pass, or something else it must do, in order to carry out the policies expressed in the objectives.

Here are two examples of proposed planning statements in which a variety of established and alternative implementation techniques is set forth.

Goal: To accommodate future population increases while preserving productive agricultural soils.

Objective: To maintain in agricultural open space prime agricultural soils (as defined in the Williamson Act, California Government Code Section 51201) and all lands now being used or appropriate for producing food or fiber; provided, however, that some agricultural lands may be designated for conversion where agricultural viability is severely limited by urban-rural conflicts or where conversion is necessary for development to create viable neighborhoods and establish a stable limit to urban development.

Implementation: (a) Establish urban area boundaries for all cities and unincorporated areas in the county.

(b) Work with the Local Agency Formation Commission (LAFCO) to develop spheres of influence designations for cities and special districts.

(c) Institute exclusive agricultural zoning.

(d) Encourage use of the Williamson Act.

(e) Use agricultural buffers where new development is adjacent to farm land.

(f) Inform landowners of the benefits of deeding conservation easements to the jurisdiction or a local land trust.

(g) Encourage or require cluster development at the urban fringe with the resulting open space to be located at the urban-rural interface.

* * *

Goal: To help provide all citizens with a wide choice of safe and efficient housing opportunities.

Objective: To promote the use of varied and more efficient residential design concepts.

Implementation: (a) Allow use of planned unit developments (PUDs) as a conditional use in all residential zones.

(b) Allow use of cluster development in conventional subdivisions.

(c) Allow use of zero lot line housing in PUDs and conventional subdivisions.

(d) Initiate review of design standards to encourage innovative design and lower-cost housing.

(e) Institute a density bonus program.

(f) Encourage developers to prepare specific plans for large residential projects.

A community may ultimately decide to include in its general plan some, all, or none of the alternative techniques listed above. But local decisionmakers owe it to themselves and to their constituents to become informed about such alternatives and the potential they offer for fulfillment of community objectives.

SELECTING THE ALTERNATIVE TECHNIQUES

The implementation techniques described in this guidebook were chosen following a survey conducted among planners and planning commissioners in the twelve rural counties and twenty-six small cities (below 10,000 population) that are included in the Northeastern California Service Area of Chico State University. A questionnaire mailed in the spring of 1981 invited the recipients to choose from a list of land use related problem areas and to rank them according to the degree of concern they presented to the community (with space provided to include issues not on the list). Responses were received from eleven counties and twenty-four cities. The *top five issues chosen by the eleven responding counties are as follows:

Growth management (highly ranked by 10 counties)
Loss of agricultural land/urban sprawl (9)
Affordable housing (9)
Sphere of influence designation** (8)
Subdivision design and planned developments (6)

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*Selection of the five top issues was based on how often a particular issue or problem was numbered 3, 4, or 5, considered to be a "moderate," "important," or "great" problem for the community.

**The sphere of influence designation refers to the state requirement that cities and special districts develop plans describing their probable ultimate physical boundaries or service areas.

The top five issues designated by the twenty-four responding cities are as follows:

Affordable housing (highly ranked by 20 cities)
Subdivision design and planned development (18)
Sphere of influence designation (15)
Sign ordinance and architectural controls (12)
Growth management (12)

With regard to the category of growth management, in subsequent discussions with respondent planners and commissioners it was made clear that to most of the them "growth management" did not mean stopping or limiting the inflow of new residents. Rather, it indicated the need for an overall program within which the city or county could deal with growth pressures in an organized way and through a process that assured that such growth would be beneficial to the locality and consistent with community values.

With the exception of loss of agricultural land/urban sprawl, ranked highly by all but two counties, the techniques presented in this guide are those that can be used to help solve the planning problems ranked most highly by both city and county respondents. The alternative techniques and the problem areas to which they correspond are set forth in Table 1. While opinions may differ on the exact techniques chosen for inclusion in this guidebook, in general they all meet the following criteria:

1. They are appropriate to the scale and context of those land use problems that arise in rural and small town settings.

2. They can be implemented without additional state legislation.

3. They are legally accepted. That is, they are either specifically provided for by state enactments or are within the police power of the locality as interpreted by California courts.

4. Provided, where necessary, that some professional assistance is available, they are within the capacity of some or all of the small and rural jurisdictions to implement.

5. Implementation will not unduly increase the financial burden of the community as compared to the benefits implementation will offer.

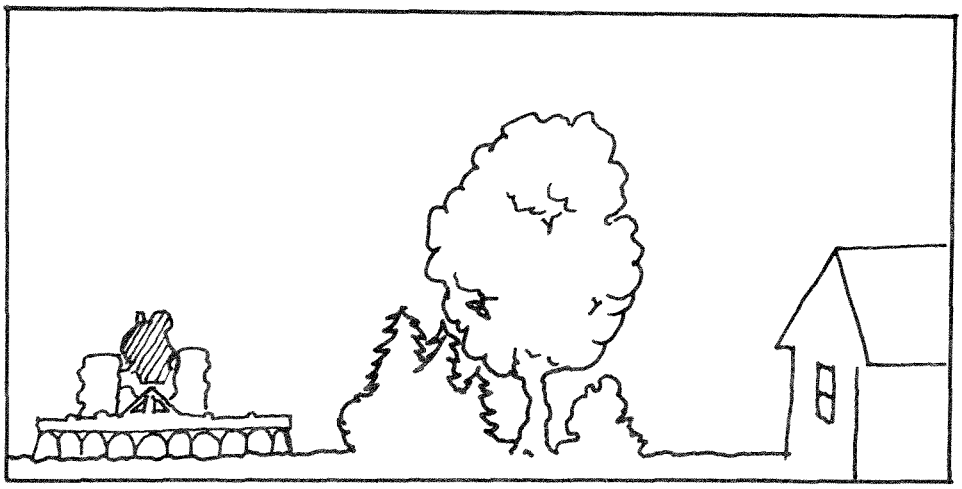
A final word. The alternative techniques presented in the next section are not "new"; indeed, many are in use today in a number of California communities. However, they are in only limited use in small towns and rural areas. Our hope is that communities will use this

guidebook to inform themselves of the planning tools described herein. We believe that such alternative techniques can help them deal more successfully with the land use problems that confront them now and those that they will face in the future.

ALTERNATIVE TECHNIQUES AND RELATED PLANNING PROBLEMS

ALTERNATIVE TECHNIQUES	AGRICULTURAL LAND PRESERVATION/ URBAN SPRAWL	SUBDIVISION DESIGN AND PLANNED DEVELOPMENT	LAFCO SPHERE OF INFLUENCE DESIGNATION	AFFORDABLE HOUSING	GROWTH MANAGEMENT
Agricultural buffers	X	X	X		X
Agricultural use notice	X				
Area plan	X				X
Capital improvement program	X		X		X
Cluster development	X	X		X	X
Conditional rezoning	X	X		X	X
Density bonus		X		X	X
Design standards review		X		X	
Fiscal impact analysis	X		X		X
Hillside/slope zoning		X			X
Land banking	X			X	X
Land trust	X				X
Performance zoning		X			X
Planned unit development	X	X		X	X
Specific plan		X			X
Sphere of influence designation	X		X		X
Stream/creek zoning		X			X
Streamlining land use review		X		X	
Urban area boundaries	X		X		X
Woodlands protection zoning		X			X
Zero lot line housing		X		X	

THE ALTERNATIVE TECHNIQUES



AGRICULTURAL BUFFERS

Definition

Devices such as setback lines, fences, native vegetation, physical barriers, and other regulatory and landscaping techniques intended to ensure that urban-oriented uses and agricultural uses do not adversely impact on one another. The buffer scheme should help to separate urban areas from rural areas and protect rural areas from urban conflicts.

How It Works

There are a number of ways by which communities can provide for agricultural buffers.

1. Establish a policy that all development in designated urban-rural interface areas contain a specified setback (100-200 feet?) called a "buffer zone." Within the buffer zone, buffering improvements such as permanent open space, landscaping, fencing, and other design schemes should be required. The buffering requirement can be eliminated or modified if there are significant topographical differences, substantial vegetation, or existing physical barriers between the urban and rural areas.

2. Assign to an agricultural policy advisory commission or an existing review agency the function of reviewing and approving buffering schemes for land adjacent to commercial agricultural land, including the determination of the required setback line. Where a major setback is not feasible, compensatory

buffering should be required. Commission approval of the buffering scheme should be made part of the building permit process, with the right of appeal to the legislative body.

3. Require that subdivision developments on the urban fringe or adjacent to commercial agricultural lands be constructed in a cluster form of development so as to place the dwellings as far as possible from the agricultural land; a maximum of open space is thus created to serve as a buffer between the residential and agricultural uses.

4. Develop a performance standard that requires all residential building sites in a subdivision to be adequately insulated from direct contact with potential nuisances from farming activities. The developer should be free to comply by (a) choosing a suitable location, (b) providing buffer-type landscaping, (c) obtaining agreements from neighboring farmers to refrain from certain practices, or (d) employing other appropriate means acceptable to the community.

5. Whenever possible, draw urban-rural lines at locations where permanent physical or natural barriers already exist.

Potential Benefits

1. Reduces the possibility of conflicts between urban and rwral uses.

2. Provides some assurance to farmers that neighboring residential development will not adversely impact on their ability to carry out normal farm operations.

3. Helps to define the urban and rural boundaries of a community.

Limitations

1. May add costs to the development of fringe properties (although the use of cluster development should contribute to a reduction in development costs).

2. Where performance standards are used, site-plan review is required to determine compliance with the standards.

3. The use of an agricultural commission or other body to review and approve buffering schemes could lead to arbitrary decisionmaking if the standards are not based on clearly expressed policy objectives.

Legal Status

Accepted. An amendment to the zoning law may be required to initiate some buffering techniques, while others may be imposed as conditions to the granting of particular development permits.

Interrelationships

Conditional rezoning, performance zoning, cluster development, agricultural use notice, urban area boundary.

Experience

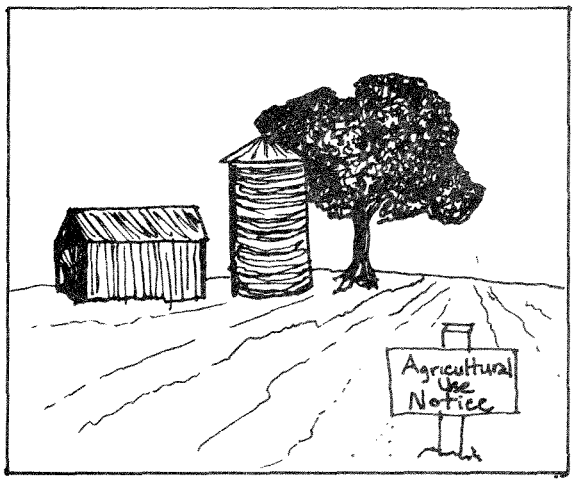
Limited but increasing. The California Coastal Commission requires a 200-foot setback as a buffer zone in developments within or adjacent to commercial agricultural lands. In Santa Cruz County, a five-member agricultural policy advisory commission made up of farm representatives reviews buffer requirements as part of the county's building permit system. In its planned agricultural district, San Mateo County permits single-family residences on non-prime lands suitable for agriculture providing, *inter alia*, "clearly defined buffer areas are developed between agricultural and non-agricultural uses." In addition, parcels created for non-agricultural purposes "shall be as small as possible to meet minimum domestic well water and on-site sewage disposal requirements," and "all non-agricultural parcels shall be clustered in locations most protective of existing and potential agricultural uses."

Many communities encourage planned unit developments with clustered housing in fringe areas in order to obtain the open space for use as a buffer. Buffering is, of course, an important tool in performance zoning, where it is used to eliminate or reduce impacts of more intense or nuisance-producing uses on neighboring or adjacent uses within the same district.

References

1. Lane Kendig, *Performance Zoning* (Chicago: Planners Press, 1980), pp. 45-50.

2. Scott Lefaver, "A New Framework for Rural Planning," *Urban Land*, 37 (April 1978), 7-13.



AGRICULTURAL USE NOTICE

Definition

A warning notice, a requirement imposed by local ordinance, to be placed in contracts of sale and parcel deeds; along with other actions, it will forewarn prospective purchasers of property adjacent to commercial agricultural land of the potential problems associated with such purchases, including the sounds, odors, dust, and chemicals that accompany agricultural operations. The notice requirement is designed to reduce the loss of agricultural production by limiting the possibility that farmers will become subject to nuisance actions because of their engaging in normal farming operations.

How It Works

1. In July 1981, the Butte County Board of Supervisors adopted an ordinance adding certain sections to the county code to require that the following statement be included in any deed or contract of sale conveying property adjacent to or included in any agricultural zoning district:

> The property described herein is adjacent to or within land utilized for agricultural purposes and residents of this property may be subject to inconvenience or discomfort arising from the use of agricultural chemicals, including but not limited to herbicides, pesticides, and fertilizers; and from the pursuit of agricultural operations including but not limited to cultivation, plowing, spraying, pruning, and harvesting that occasionally generate dust, smoke, noise, and odor. Butte County has established agricultural zoning that sets as a priority the use of these agricultural lands included therein, and residents of adjacent property or within the zoned areas should be prepared to accept such inconvenience or discomfort from normal, necessary farm operations.

2. The ordinance further provides that where a building "is to be located either adjacent to or within a zone established for production of food, fiber, livestock, timber, or other agricultural operations," prior to the issuance of a building permit the applicant must *record a statement* of acknowledgment by the owners of the property on a form approved by the Department of Public Works containing the statement described above, or provide evidence that the statement has been made part of the parcel deed.

3. Once recorded, the notice should appear in the title insurance report for the property as an exception against the land.

4. The ordinance further provides that "a person who is acting as an agent for a seller of real property which is located within or adjacent to agricultural land as designated on the zoning map of the county, or the seller if he or she is acting without an agent" shall disclose to the prospective purchaser the information contained in the statement described above.

5. To the extent applicable with state law, the Butte ordinance also establishes county policy that preexisting commercial agricultural uses in operation for more than one year shall not become a nuisance merely because of a change in conditions in the surrounding area when such agricultural use did not constitute a nuisance when the operation began.

Potential Benefits

1. Informs potential purchasers of the problems that might arise should they choose to reside next to land in commercial agricultural zones.

2. Places potential purchasers on notice that the locality does not consider normal farming operations as nuisances and will not assist in abatement of related inconveniences to adjacent non-farm residents.

3. Assures farm operators that incoming non-agricultural residents have been informed of the possible inconveniences that might arise; their having such knowledge may place farm operators in a better legal (and political) position should those operations be challenged.

Limitations

1. The agricultural use notice is not retroactive and applies only to land transfers made after its implementation date.

2. While the warning may have great value in placing prospective purchasers on notice concerning possible inconvenient agricultural practices, it is not clear what effect such a warning would have should a nuisance action actually be brought against a farm operator.

Legal Status

Accepted, but as stated above, its legal effectiveness is uncertain. California Civil Code Section 3482.5, effective January 1, 1982, provides that certain defined commercial agricultural activity shall not be or become a nuisance because of any changed condition in or about the locality after it has been in operation for longer than three years if it was not a nuisance at the time it began. However, a number of exceptions in the law may tend to limit its value to farm operators.

Interrelationships

Agricultural buffers, urban area boundary.

Experience

Appears to be of growing use. In California, along with Butte County, Santa Cruz and San Mateo counties require similar warning notices, as does Marion County in Oregon. Stanislaus County has passed a "right to farm" ordinance similar to the state law described above for agricultural operations that have been in effect for longer than one year.

AREA PLAN

Definition

Sometimes called a neighborhood plan, it is a planning document that covers only part of the geographic area of a city or county and allows the community to establish goals and policies especially appropriate for the particular area. It is a means of focusing planning attention on special areas in the jurisdiction (including neighborhoods) and involving residents of those areas in the shaping of their communities. It is adopted in the same manner as an element of the general plan and has the same legal effect as any other general plan element.

An area plan differs from a specific plan in that it establishes general policy guidelines rather than set forth the detailed standards under which future development will take place. It is possible for all or part of the land included in an area plan to later become the subject of a more detailed specific plan.

How It Works

1. An area plan can be prepared like any other general plan element. It is developed under the supervision of the planning staff and commission, often with the participation of a committee of area residents.

2. An area plan need not address all the issues required in a comprehensive general plan (e.g., noise, public safety) if other elements of the general plan discuss such issues on a jurisdiction-wide basis. Many area plans cover only issues found in the land use element. As an adopted element of the general plan, area plan policies must, of course, be consistent with other general plan policies.

3. Area plan preparation requires an adequate data base, especially where development pressures are anticipated in an area of ecological sensitivity.

4. Adoption of an area plan may require the completion of an Environmental Impact Report (EIR); in some instances a negative declaration will be appropriate. Under state administrative guidelines, where the information required for the completion of an EIR is found in the general plan itself, it need not be set forth in the EIR. (California Administrative Code, Title 14, Section 15148.)

5. The area plan should be regularly reviewed and revised as new information becomes available and the needs and values of the public warrant change. The plan should be monitored to assure that implementation techniques are, in fact, helping to achieve the objectives set forth in the plan.

Potential Benefits

1. Allows residents of an area to work with planning officials in the shaping of their community.

2. Allows close examination of the resources and potentials of a defined area and enables the community to adopt policies and standards appropriate for the area.

3. Provides the comprehensive information and policies necessary to guide an innovative and flexible land use control program, e.g., performance controls for sensitive areas.

4. Enables basic conflicts regarding future land uses in a particular area to be discussed by the concerned parties in a planning framework and before major development pressures arise.

Limitations

Will add some additional time and expense to the land management process.

Legal Status

Accepted.

Interrelationships

Specific plan, urban area boundary, sphere of influence designation, performance zoning.

Experience

Widespread. In Northeastern California, recently completed area plans included the Eagle Lake Area Plan prepared by Lassen County and the Scott Valley Area Plan prepared by Siskiyou County. The latter plan includes resource constraint maps and policies designed to limit future

urban development to existing urban areas. Many communities use the area plan technique as a means of involving residents in neighborhood planning.

References

1. Lassen County, *Eagle Lake Area Plan* (1981).

2. California, Office of Planning and Research, *General Plan Guidelines* (Sacramento, 1980).

3. Siskiyou County, *Scott Valley Area Plan* (1981).

CAPITAL IMPROVEMENT PROGRAM

Definition

A program for the multi-year budgeting of capital improvement expenditures, typically for a five- or six-year period. The program puts together in one form and place a projection of what capital improvements are most needed, where they should be located, when they should be provided, and how they should be financed. Capital improvements usually include sewer and water facilities, street and road improvements, street lights, traffic signals, police and fire facilities, park acquisition, and similar public projects. A capital improvement program is an implementation tool of the general plan.

How It Works

The process of establishing a capital improvement program involves several steps:

1. After a careful study of the general plan and the developmental policies set forth within the plan, the major needs of the city or county for the next five- or six-year period are determined. A list of recommended capital projects is submitted by the officials responsible for the various services.

2. The various proposed projects are ranked according to importance and a timetable for each is established. The priority of need is ascertained in great part by reference to the general plan.

3. A schedule for the provision and funding of each capital project is established. The schedule should include the method of financing for each project, for example, taxes, user fees, bonds, grants, or revenue sharing funds.

4. The capital improvement program for the first year is customarily adopted as part of the annual budget and therefore must be detailed through cost estimates. A progressively greater generalization for program items is acceptable for future years.

5. Once the prioritized plan is assembled, it is reviewed annually to adjust figures which have been amended and to add new projects or delete proposed ones in accordance with

changes in the general plan. The planning commission should play a role in both the adoption and review of the capital improvement program.

Potential Benefits

1. Contributions to sound fiscal management:

   (a) Scheduling of the anticipated capital projects enables the city or county to distribute the costs of the projects evenly, so that the community does not confront large increases or decreases in the annual budget from one year to the next.

   (b) Promotes the development of a projected revenue policy and indicates the source of dollars used to finance the proposed improvements.

   (c) Sets forth a total picture of overall community needs and discourages a piecemeal approach to its problems.

2. Contributions to sound planning practice:

   (a) Extends public facilities and urban services to undeveloped areas in accordance with established planning policies.

   (b) Encourages new development to coincide with scheduled capital improvements while discouraging development in areas not programmed for capital improvements.

   (c) Provides for scheduled purchases of land in advance of actual need, thereby minimizing costs to the community.

   (d) Permits establishment of a growth management system under which developers may be permitted to install public facilities at their own expense if these facilities are not scheduled until later years.

Limitations

1. Requires additional time by administrative and legislative officials for preparing, reviewing, and revising the capital improvement program and budget.

2. Capital improvement programming will not discourage development in areas where site conditions and development controls permit on-site sewer and water systems or where key support facilities and urban services already exist.

Legal Status

Accepted. Encouraged but not required by state law.

Interrelationships

Useful at all stages of the planning process, particularly in site selection decisions, drawing of urban area boundary lines, fiscal impact analysis, and sphere of influence designation.

Experience

Widespread use by city and county governments.

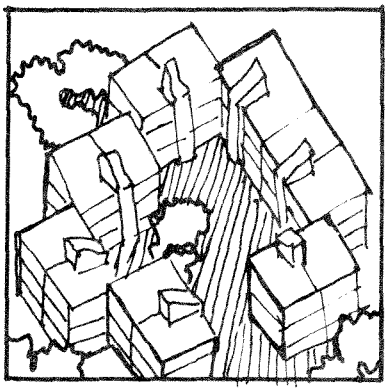
References

1. American Society of Planning Officials, *Local Capital Improvements and Development Management* (Washington, D.C.: U.S. Government Printing Office, 1977).

2. League of California Cities, *Guidelines for Capital Improvement Budgeting in California Cities* (Sacramento, 1966).

3. Neil L. Meyer, *Programming Capital Improvements* (Corvallis, Ore.: Western Rural Development Center, Oregon State University, 1980) [Address: Corvallis, OR 97331].

4. Municipal Finance Officers' Association, *A Capital Improvement Programming Handbook for Small Cities and Other Governmental Units* (Chicago, 1978).



CLUSTER DEVELOPMENT

Definition

A development pattern in which uses are grouped or "clustered" through a density transfer rather than spread evenly throughout a parcel as in conventional lot-by-lot development. The area equal to the total reduction in the normally required lot remains in open space. This form of development is particularly appropriate in sensitive environmental areas--steep slopes, woodlands, wetlands--permitting substantial portions of development sites to be left in undisturbed natural open space. The cluster approach is noted for the savings it can generate because of reduced infrastructure costs and other economies of development.

How It Works

1. Cluster development is permitted as a right in PUD districts and is frequently allowed only in such districts. It may also be administered as a separate zoning classification through a floating zone, available at the request of a developer, or as a conditional use in a traditional zoning district. This latter approach encourages the use of the cluster concept without forcing the developer to go through a time-consuming PUD zone change and maintains planning commission review authority over the project's site plan.

2. Under the provisions of cluster development the gross residential density within a subdivision remains the same as that permitted in a conventional subdivision under the same zoning.

3. Housing may be clustered on the buildable part of the tract in any number of ways: detached housing on small lots, detached housing on larger lots, attached houses, zero lot line housing, and multiplex dwellings.

4. The clustering of living units permits provision of a level of recreation facilities impossible in the standard single-family subdivision. At the same time, purely private open space is

provided in the form of small enclosed private gardens directly linked to the individual houses.

5. The large open space area can be dedicated to the locality, or, more likely, placed in the care of a homeowners' association. The association is a legal entity which owns the common land, improvements, and facilities. Homeowners become members upon acquiring fee simple interests to their houses and lots.

Potential Benefits

1. Should reduce the cost of housing. Clustered housing units and large tracts of undeveloped land enable builders of clustered developments to save costs in the form of:

   (a) Diminished road lengths and sidewalks, and reduced need for curbs and gutters

   (b) Diminished sewer lengths (pipelines and manholes) and savings on installation (sanitary and storm sewers)

   (c) Diminished pipeline requirements for water supply, including valves and fire hydrants

   (d) Reduced cost of installing gas and electric utilities

   (e) Reduced clearing and grading costs (the developer need not bulldoze most of the tract)

2. Leads to the preservation of large open spaces and aesthetic and ecological benefits.

3. Reduced cost of infrastructure development should assist developers who must carry the cost of infrastructure improvements without relying on institutional loans during the early stages of the development.

4. Allows more economical use of the site than would conventional subdivision. In order to yield the total number of lots permitted per acre, the conventional subdivision would have to cover the entire site with building lots. This, of course, is not feasible, since some portion of any given parcel of land will usually be unsuited for building, or some percentage of the tract must be dedicated as open space. Cluster, however, allows the developer the maximum effective density.

5. Can be used as a form of buffer where residential development is permitted next to farmland; the housing is clustered away from the farmland and the development's open space acts as a buffer between the two uses.

Limitations

1. May result in increased up-front planning costs in site planning, design, and engineering.

2. May increase the processing time for development approval, unless cluster development is allowed as a right in subdivision development or changes are made to simplify and speed up the approval process.

3. Care must be taken to assure that a large percentage of the open space is usable and not merely unbuildable "waste" land.

4. It is possible that savings to homebuilders will not be passed on to home buyers.

Legal Status

Accepted. For a discussion of its legitimate role in the local planning process, see *Orinda Homeowners Commission* v. *Board of Supervisors*, 90 Cal. Rptr. 88 (Ct. App., 1970).

Interrelationships

Planned unit development, conditional rezoning, zero lot line housing, agricultural buffers, performance zoning, stream/creek zoning, hillside/slope zoning, woodlands protection zoning.

Experience

Widespread.

References

1. American Planning Association, *The Cluster Subdivision: A Cost-Effective Approach*, Planning Advisory Service Report No. 356 (Washington, D.C., December 1980).

2. *Innovative Zoning: A Local Official's Guidebook* (Washington, D.C.: Department of Housing and Urban Development, 1977), pp. 10-14.

3. National Association of Home Builders, *Cost-Effective Site Planning* (Washington, D.C., 1976).

4. Robert Small and Richard Untermann, *Site Planning for Cluster Housing* (New York: Van Nostrand Reinhold Co., 1977).

CONDITIONAL REZONING

Definition

The attachment to a rezoning of special conditions that are not set forth in the text of the ordinance and do not generally apply to land similarly zoned. Conditional rezoning adds flexibility to the land use control process by allowing local decisionmakers to tailor zoning restrictions to the character and location of the rezoned land and to the potential impacts of the proposed use.

How It Works

1. Conditional rezoning has been a part of the planning process in Sacramento County for over twenty years, and its operation may be used as a model for other jurisdictions. It was introduced through an amendment to the County Zoning Code (Chapter 15, Article 2) providing that in cases of rezoning the planning commission may recommend, and the board of supervisors may impose, "conditions to the rezoning classification of the property where it finds that said conditions must be imposed so as not to create problems inimical to the public health, safety, and general welfare of the County of Sacramento."

2. The ordinance further provides that the imposed conditions "shall run with the land and should not automatically be removed by a subsequent reclassification of the property. Said conditions may be removed only by the board of supervisors after recommendation by the planning commission."

3. Conditional rezoning in Sacramento County is implemented as follows:

   (a) During review of a zoning application, planning staff identifies adverse effects that may result from the rezoning and formulates conditions that if applied would tend to mitigate them.

   (b) The planning staff discusses the proposed conditions with the applicant and thereafter recommends their adoption to the planning commission as part of the rezoning. The board of supervisors acts on the recommendation of the commission. The applicant may protest the conditions before either or both of the governmental bodies and, if unsuccessful, withdraw the application.

(c) Following approval of a rezoning with conditions, the board requests the county counsel to draft an agreement between the landowner and the county setting forth the conditions; it also, by resolution, directs the chairperson of the board of supervisors to sign the agreement on behalf of the county. Upon execution, the agreement is recorded as a restriction on the property.

4. Conditions attached to the rezoning may encompass a broad array of concerns. In general, they fall within three categories, although, so long as they have a reasonable relationship to the rezoning, they need not be so limited:

   (a) A requirement that final development plans be submitted for approval to the board of supervisors

   (b) A restriction of the uses allowable on the rezoned property; for example, disallowing uses otherwise permitted within the zone classification if they will generate a high volume of traffic

   (c) The imposition of special development requirements, such as an extra large setback from an adjoining use or more intensive landscaping

5. Enforcement of the rezoning conditions is carried out through the withholding of building permits, occupancy permits, or business licenses, and through the activities of the Zoning Enforcement Section of the County Planning Department.

Potential Benefits

1. Adds important flexibility to the zoning process.

2. Permits necessary but otherwise undesirable uses under conditions that minimize detrimental impacts without overly restricting the location of such uses.

3. Provides a legally secure way of ensuring that mitigation measures proposed in an EIR will be incorporated into the development.

4. Provides a means of resolving conflicts among diverse groups concerning how certain land shall be developed.

Limitations

1. Requires acceptance of the increased restriction by the applicant.

2. Developers may prefer to enter into a development agreement pursuant to California Government Code Sections 65864 et seq. Such agreements have an effect somewhat similar to conditional rezoning, but unless otherwise stated, bind local governments to the full range of development standards in force at the time of the agreement. Under conditional rezoning, land use regulations can still be changed prior to the landowner's obtaining a vested right in the property (e.g., by performing substantial work in reliance on a valid building permit).

Legal Status

Accepted. The major case upholding conditional rezoning in California as a valid exercise of the police power is *Scrutton* v. *County of Sacramento*, 275 Cal. App. 2d 412 (App. Div. 1969). The court stated, however, that an automatic reversion of the land to its former zoning cannot be required if the conditions are not met. Such a reversion would be a zoning amendment that would be invalid for failure to comply with the state zoning law.

Interrelationships

Agricultural buffers, performance zoning, planned unit development.

Experience

Of limited use, probably because of its questionable legal status outside of California, although the national trend appears now to be leaning toward its validation. About two-thirds of the rezonings in Sacramento County are of a conditional nature. The technique is also in use in the County of Fresno and in the cities of Fresno and Morgan Hill.

References

1. American Planning Association, *The Administration of Flexible Zoning Techniques*, Planning Advisory Service Report No. 318 (Washington, D.C., June 1976).

2. "Contract and Conditional Zoning: A Tool for Zoning Flexibility," *Hastings Law Journal*, 23 (March 1972), 825-47.

3. Annette Kolis Eagleton, "Recent Trends in Conditional Rezoning Validation," *Urban Land*, 40 (November 1981), 21-23.

4. League of California Cities, *Development Agreement Manual* (Sacramento, December 1980).

DENSITY BONUS

Definition

A land use incentive technique by which a builder or developer agrees to provide certain amenities or other community benefits in exchange for a bonus, usually permission to build at a higher density. In California, the density bonus has become an important tool to achieve more affordable housing. Under Government Code Section 65915, local officials must grant a 25 percent density bonus or similar incentives to developers who set aside at least a quarter of their total units for low- and moderate-income residents. Communities may also undertake voluntary density bonus programs to achieve local objectives such as the production of housing for the elderly.

A common form of the density bonus is found in planned unit development ordinances. It permits developers to build more housing units in exchange for clustering the structures, providing common open space, providing other design features, or simply making use of the planned unit development process.

How It Works

1. Under the density bonus provision of California Government Code Section 65915, if a developer's one-acre site is zoned for a maximum of eight units per acre, the developer can agree to set aside two units for low- or moderate-income people and ask for a total density of ten units. If the city or county approved the project, it would have to grant the ten units or provide two other bonus incentives. Even though a developer may wish to build more than 25 percent low- and moderate-income housing, the locality is not required to grant a larger density bonus.

2. If the 25 percent density bonus is not granted, Section 65915 requires the city or county to provide at least two other money-saving incentives to a qualified project, chosen from the following:

   (a) Waiver of park and recreation fees and dedications under the Quimby Act (California Government Code Section 66577)

   (b) Construction by the city or county of such public improvements as streets, sewers, and sidewalks

(c) Use of federal, state, or local funds to reduce property costs

(d) Exemption from local ordinances that indirectly increase housing costs, but not if a local ordinance implements a state-imposed requirement

3. The definition of "persons and families of low and moderate income" as used in Section 65915 generally means persons and families whose incomes are less than 120 percent of the median income in the area. The California Department of Housing and Community Development reports the data for different size families in each of the state's fifty-eight counties (California Administrative Code, Title 25).

4. Where density increases are granted in exchange for project amenities, the zoning ordinance should state the specific criteria (be they subjective or numerical standards) to be considered and the specific density bonus that can be given. For example, under one ordinance the planning commission is authorized to grant a density increase of up to 15 percent where such features as landscaping (including streetscape, open spaces, use of existing vegetation), siting (including variations in building setbacks) and design (including varied use of housing types) are considered to make a substantial contribution to the objectives of a planned unit development.

Potential Benefits

1. Can contribute significantly to the economic feasibility of low- and moderate-income housing in proposed housing developments.

2. Encourages developers to carry out various community policies such as the provision of desired amenities, the protection of special areas, and the building of housing for particular populations.

Limitations

1. In rural and fringe areas, where developable land is available and relatively inexpensive, consumers (and hence developers) may not be interested in higher density. In such cases, bonuses that permit mixing of uses and cost-saving design flexibility are likely to be more attractive.

2. Unless clear guidelines are established to control the awarding of bonuses based on subjective standards (e.g., design or landscaping), arbitrary decisionmaking is possible.

3. Communities may wish to obtain assurances that the low- and middle-income housing built in exchange for a density bonus are in fact sold and resold as such.

Legal Status

Accepted. Under Section 65915 the density bonus can exceed the maximum density allowed in the local zoning ordinance. However, to avoid any uncertainty in this regard, the general plan and zoning ordinance should be amended to include the ability to utilize density bonus programs. Section 65915 is applicable to charter cities.

Interrelationships

Cluster development, planned unit development, design standards review, performance zoning, zero lot line housing.

Experience

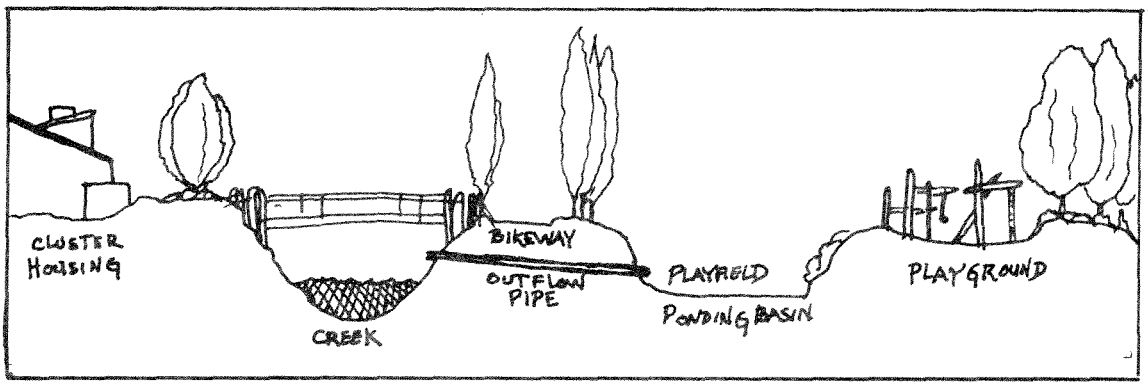
Density bonus programs are operating in a number of California cities and counties, including the counties of Santa Cruz and San Diego and the cities of Santa Rosa, Morgan Hill, Hemet, Davis and Moraga. The cities of Saratoga, Los Gatos, and Oakland offer density bonuses for the production of housing for the elderly. In the city of Simi Valley, density increases are used to promote the development of mobile home parks. In Sacramento County, the special development permit (similar to planned unit development) provides for density bonuses if environmentally significant features of the property are preserved, energy conserving design is employed, or lower cost housing is provided.

References

1. American Planning Association, "Incentive Zoning," in *The Administration of Flexible Techniques*, Planning Advisory Service Report No. 318 (Washington, D.C., June 1976).

2. California, Office of Planning and Research, *Bonus Incentives for Affordable Housing* (Sacramento, 1980).

3. California Building Industry Association, *The Feasibility of the Density Bonus in Relation to Inclusionary Housing Programs* (Sacramento, 1980) [Address: 1225 8th Street, Sacramento, CA 95814].



DESIGN STANDARDS REVIEW

Definition

The review and modification of on-site and off-site development design standards for the purpose of reducing the costs of development while providing for basic environmental, health, safety, and welfare needs. Along with development cost reduction, the modification of design standards can result in energy savings and produce developments which are more sensitive to the environment. For example, streets that are wider than necessary not only increase costs, but may encourage speeding and generate excess stormwater; the use of grass swales instead of curbs and gutters is less expensive and permits percolation back into the ground. Design standards review also allows local officials to determine whether standards established in previous years continue to represent the best means to achieve specific functional objectives.

How It Works

The planning commission reviews and where necessary recommends changes in local land use regulations that appear to require more in neighborhood design requirements than are necessary for the achievement of specific planning objectives. To start, the commission may wish to consider the following checklist of possible areas of overdesign:

COMMUNITY GUIDE TO POSSIBLE OVERDESIGN IN LOCAL LAND USE REGULATIONS

(A "No" response indicates possible local overdesign and related increase in development costs)

	YES	NO
I. Zoning Ordinance		
Does your community permit:		
(a) Front yard setbacks of 20 feet or less? (Minimizes front yard, utility connection, and pavement costs.)	___	___
(b) Lot width (or frontage) of 60 feet or less?	___	___
(c) Minimum lot sizes of less than 6,000 square feet? (Reflects the national trend toward smaller homes.)	___	___
(d) Planned unit developments (PUDs)?	___	___
(e) Cluster development, as permitted or conditional use, outside of PUD zone?	___	___
(f) Zero lot line housing?	___	___
II. Subdivision Regulations		
Does your community permit:		
Streets		
(a) Cul-de-sac street width of 30 feet or less?	___	___
(b) Local or residential street width of 36 feet or less?	___	___
(c) Rights-of-way of 56 feet or less?	___	___
(d) Cul-de-sac lengths of 500 feet or more? (Minimizes cost by reducing number of collector streets and increasing number of buildable lots; will also increase traffic within cul-de-sac.)	___	___
(e) Sidewalks of 4 feet in width or less?	___	___

	YES	NO
(f) Sidewalks on only one side of the street or only where pedestrian traffic requires?	___	___
(g) The use of private streets in subdivisions or PUDs?	___	___
(h) The use of rolled curb-sidewalk combination to avoid curb-cuts?	___	___
Storm Drainage		
The open drainage system that uses the natural features of a site? (Swales and open channels used to accumulate the overload flow and transport the runoff to acceptable outlets; allows stormwaters to filter into the ground while enhancing the aesthetic value of the site; requires careful design and close maintenance.)	___	___
Sewage		
(a) Multiple service laterals in PUDs?	___	___
(b) Use of 36-inch diameter manholes where the manhole depth is 6 feet or less?	___	___
(c) The spacing of manholes as far apart as available inspection and maintenance will allow (minimum of 400 feet)?	___	___
(d) Use of PVC pipe for sewer lines?	___	___
(e) Septic tanks where public health is protected and sanitary sewer connections are costly or not feasible?	___	___
Utilities		
(a) Joint utilization of trenches where undergrounding is required?	___	___
(b) Utility easements outside of the right-of-way?	___	___
Water Facilities		
Fire hydrant intervals of 500 feet or more?	___	___

Potential Benefits

1. Should result in reduction of development costs.

2. Can result in energy saving and encourage developments that are more sensitive to the environment.

3. Allows the community to reexamine standards and determine their present utility and the degree to which they reflect the state of the art.

4. Allows a community to introduce performance standards in place of specific standards in zoning and subdivision ordinances.

Limitations

Review should be done carefully to assure that a change in one standard does not compromise another community objective and that newly adopted standards do not result in long-term maintenance cost increases.

Legal Status

All items on the checklist are within the power of local governments to implement as part of their land use regulation authority. See *Schroeder* v. *Municipal Court of Los Cerritos* 73 Cal. App. 3d 840 (Ct. App. 1977).

Interrelationships

Planned unit development, cluster development, performance zoning, conditional rezoning, streamlining land use review.

Experience

The cities of Chico and Davis have modified their development criteria to reduce many of the "overdesign standards" which appear in the checklist. Cul-de-sac streets in Davis are 28 feet in width; the Village Homes PUD in Davis makes imaginative use of a natural drainage system as does the city of Visalia's Northeast Area Specific Plan. Requirements for local streets in Chico are being reduced to 32 feet and, with the use of 5-inch fire hoses, hydrants may be placed at intervals of 500 feet or more; where consistent with health standards, new development is not required to make use of city sewer service.

References

1. Bucks County Planning Commission, *Performance Streets: A Concept and Model Standards for Residential Streets* (Doylestown, Pa., 1980) [Address: Box 12, Crosskeys Office Bldg., Doylestown, PA 18901].

2. California Building Industry Association, *Manual for Reducing Housing Costs* (Sacramento, 1979).

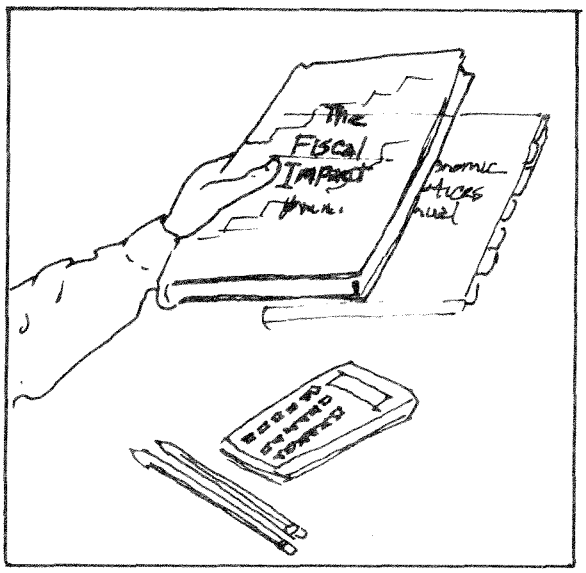
3. Michael N. Corbett, *A Better Place to Live: New Designs for Tomorrow's Communities* (Emmaus, Pa.: Rodale Press, 1981).

4. National Association of Home Builders (NAHB), *Cost Effective Site Planning: Single Family Development* (Washington, D.C., 1976).

5. NAHB, *Residential Storm Water Management: Objectives, Principles and Design Considerations* (Washington, D.C., 1976).

6. NAHB, *Residential Streets: Objectives, Principles and Design Considerations* (Washington, D.C., 1976).

7. U.S., Department of Housing and Urban Development, *Reducing the Development Costs of Housing: Actions for State and Local Governments* (Washington, D.C.: U.S. Government Printing Office, 1979).



FISCAL IMPACT ANALYSIS

Definition

A projection of the direct public costs and revenues associated with residential or nonresidential growth to the local jurisdiction in which the growth is proposed to take place. It considers the *costs* that will be incurred (operating expenditures and capital outlays) and the *revenues* that will be generated (property and sales taxes, fees, intergovernmental monies) as a consequence of the specific growth increment. The drastic decline in the role of property taxes as a result of Proposition 13 and the potential decline in state and federal assistance has increased the concern of local officials with the fiscal impact of growth and land development.

How It Works

1. Fiscal impact analysis can be applied to a number of growth-related proposals: major rezonings, standard or recreation-based subdivisions, annexations, large-scale planned unit developments, or major shopping center proposals. It can be performed separately or made part of the environmental assessment process.

2. The analysis is conducted as if the development under review were completed and in full operation. However, in some cases it may be desirable to determine the fiscal impacts year by year prior to the final stage of the project.

3. Before preparing a fiscal impact analysis for an area proposed to be developed (or annexed), it is necessary to determine what future services will be provided, who will provide them, when the services will be provided, and at what levels.

4. Several methods of fiscal impact analysis are available. The most widely accepted procedure is the per capita multiplier method, which relies on current average school costs per pupil, current municipal costs per person, and the number of persons and pupils generated by various housing types.

5. Where it appears that current expenditure patterns (average costing) will not be relevant indicators of the costs of serving new development, either by case study method or the service standard method may be used:

   Case study method: Interview local officials to determine how their respective departments will respond to the estimated growth calculated for a particular development in terms of expanding or not expanding their operating and capital facilities.

   Service standard method: Uses average of manpower and capital facility service levels, obtained from the U.S. Census of Government for municipalities and school districts of similar size and geographic location; other data sources are also available.

6. Under most methods, demographic multipliers are used to calculate the anticipated residential and school populations that will result from new housing development. The multiplier can be locally developed from household surveys or from data found in the U.S. Census Public Use Samples for recently constructed housing.

7. Communities may wish to follow the step-by-step procedures for calculating costs for various public programs set forth in the *Economic Practices Manual* of the California Office of Planning and Research. The manual includes demographic multipliers, service standards, and means of computing the revenues generated by development.

Potential Benefits

1. Enables local officials and the public to view the fiscal implications involved in the approval of a development proposal and include such considerations in their decisionmaking.

2. Allows a community to compare the fiscal costs of alternative approaches to development.

3. Allows a community to estimate the costs associated with a specific growth proposal and if necessary to delay it until the public services needed to support the development are available.

4. Enables a community to calculate the level of fees to charge developments in order to mitigate the fiscal impacts.

5. Encourages a community to adopt land use policies--such as an urban area boundary or higher densities--that have the effect of reducing the cost of providing services to new residents.

Limitations

1. Government decisions based solely on fiscal considerations may conflict with other explicit or implied community objectives such as adequate housing or a balanced community.

2. Different methods used to analyze fiscal impact have inherent strengths and weaknesses. In general, no two fiscal impact assessments of the same project have identical results.

3. Some sophistication is required in the undertaking of a fiscal impact assessment; care should be taken to choose the approach best suited to local resources.

Legal Status

Accepted. The use of fiscal impact analysis in the planning process is recommended by the state Office of Planning and Research in its *General Plan Guidelines*.

Interrelationships

Urban area boundary, sphere of influence designation, capital improvement program.

Experience

Of growing utilization. In Lassen County, California, assessments are required as part of the environmental review process. Initial drafts of the analysis are prepared by the applicant following the procedure set forth in the *Economic Practices Manual* of the Office of Planning and Research.

Fresno County requires preparation of a cost revenue analysis for any tentative subdivision map that includes land in the urban growth management area and a residential district. The cost revenue analysis summarizes the estimated revenues and costs (both capital and operating) attributable to the development over a five-year period.

References

1. California, Office of Planning and Research, *Economic Practices Manual: A Handbook for Preparing an Economic Impact Assessment* (Sacramento, 1978).

2. California Building Industry Association, *Fiscal Impact Analysis: A Broader Context* (Sacramento, 1979).

3. Robert W. Burchell and David Listokin, *The Fiscal Impact Handbook* (New Brunswick, N.J.: Center for Urban Policy Research, 1978).

4. Robert W. Burchell and David Listokin, *Practitioner's Guide to Fiscal Impact Analysis* (New Brunswick, N.J.: Center for Urban Policy Research, 1980).

5. Partnership for Rural Improvement, *The Price of Change: A Growth Impact Assessment Guide* (Pullman, Wash.: Washington State University, 1981) [Address: 330 Cleveland Hall, Pullman, WA 99164].

6. Bruce Weber and George Goldman, *Evaluating Fiscal Impact Studies: Community Guidelines* (Corvallis, Ore.: Western Rural Development Center, Oregon State University, 1980) [Address: Corvallis, OR 97333].

HILLSIDE/SLOPE ZONING

Definition

A form of performance zoning established for hillsides or slopes in order to preserve their unique characteristics and provide safe development. Poorly regulated hillside development not only destroys important environmental and aesthetic values but can result in threats to residential safety and substantial costs to the public for flood control and storm water management.

How It Works

1. An ordinance is adopted that implements the community's policies concerning hillside development. Such policies may include the protection of aesthetic views and vistas as well as the preservation of the natural terrain. Ordinance standards are particular to each community so as to reflect local conditions such as steepness, access, topography, geological conditions, climate, and vegetation.

2. Factors addressed in the ordinance through performance standards usually include:

   (a) Density related to slope gradient based on a specified formula (the steeper the slope, the lower the allowable density)

   (b) Density related to location on slope (the lower portions of the slope have the highest densities, with gradually decreasing densities going up the hillside)

   (d) Runoff control measures such as street/access design standard, limitation on building coverage, requirement for storm drainage improvements, and mandatory soil retention planting

   (e) Control of cuts and grading (generally the maximum amount of grading for any given parcel is tied to slope-density provisions)

3. Hillside/slope zoning can be adopted in different ways. The two most common methods of implementing this type of zoning are:

(a) Establishment of a hillside/slope zoning district for lands having a slope in excess of a minimum level. The district regulations are performance standards for application within the district and may be set up to provide for density variations within the district dependent on set criteria. In the alternative, multiple hillside/slope zoning districts may be adopted, with each district providing for a different use and/or intensity of use.

(b) Establishment of an "overlay" zoning district for areas within the community having a slope exceeding a minimum level. Compliance with the overlay standards is in addition to compliance with the other land use regulations for the existing zoning district. Essentially, development must comply with two sets of regulations, with the overlay zoning taking precedence in cases of conflict.

4. Hillside/slope zoning is administered through the same review and enforcement processes utilized for the administration of traditional zoning. However, site plan approval by the planning commission is generally required.

Potential Benefits

1. Provides safe development on hillsides.

2. Assures preservation of the natural terrain and the aesthetic character and view of hillsides.

3. Minimizes the dangers of runoff and sedimentation.

4. Encourages development which is compatible with the site.

Limitations

1. Effectiveness is reduced if the hillside/slope area is multijurisdictional and only one locality has adopted protective zoning standards.

2. Adequate data is required for the establishment and enforcement of the standards, particularly soil, geologic, and topographic information. Most hillside/slope ordinances require a development application to contain a combined in-depth geological and soils investigation and report prepared by a specified expert. The report is necessary so that

compliance with the standards can be measured and additional mitigation measures, if needed, can be required as conditions of development.

Legal Status

Accepted. The State Subdivision Map Act, California Government Code Sections 66410 et seq., authorizes local governments to require soils investigations and reports as well as to establish grading and erosion control requirements.

Interrelationships

Performance zoning, planned unit development, cluster development, woodlands protection zoning, stream/creek zoning.

Experience

Widespread. Examples of special zoning districts for hillside areas include the Hillside Conservation - Hillside Residential District in the city of Saratoga, the Hillside (RH) District in the city of Gilroy, and the Hillside Planned Development Zone in the city of Thousand Oaks. Overlay zones for the regulation of hillside development are used in the city of Anderson (HS-S District) and in the county of Santa Clara (5/20s Slope-Density Combining District).

References

1. American Planning Association (APA), *Caring for the Land*, Planning Advisory Service Report No. 328 (Washington, D.C., June 1977).

2. APA, *Performance Controls for Sensitive Lands*, Planning Advisory Service Report Nos. 307 and 308 (Washington, D.C., June 1975).

3. Lane Kendig, *Performance Zoning*, (Chicago: Planners Press, 1980).

4. Jon A. Kusler, *Regulating Sensitive Lands* (Cambridge, Mass.: Ballinger Publishing Co., 1980).

LAND BANKING

Definition

Purchase by a government agency of areas of land with the intent of controlling their future use. Land banking can encompass the advance acquisition of a single plot for a specific purpose or the large-scale purchase of land for a wide range of potential public and private uses. The land can be purchased while the price is still relatively low for later use, before the community or area is built up. Further development of sites needed for schools, open space, or other public facilities can thus be prevented, while land not required for public use can be resold or leased at market value for purposes consistent with local planning objectives. In recent years in California, land banking has been used at the local level for the purpose of purchasing developable land to be used to provide affordable housing for low- and moderate-income people.

How It Works

1. The land is purchased at the prevailing market rate and then "banked" until it is needed by the public agency or until it is disposed of by sale or leaseback in accordance with a comprehensive plan.

   (a) Under the leaseback arrangement, strategic acquisitions by the locality are leased back to their present owners (e.g., farmers) or others subject to appropriate restrictions on land use. Such arrangements do not put the lands back on the tax rolls.

   (b) Under the resale process, parcels are resold for private use but with conditions written into the deed to achieve legitimate planning objectives. These lands are returned to the tax rolls.

2. Though the funds for the initial purchases can be substantial, where non-public uses are planned the funds can be recovered in whole or in part though leases or sales to developers, or where agricultural land is involved, through sale or leaseback to farmers.

3. Land banking can be used to purchase sites in older sections of the community containing dilapidated dwellings which should be demolished and cleared or which are capable of being

rehabilitated. These sites can be "banked" until opportunities or funds for development or rehabilitation are available.

4. The money required to begin a land banking program can come from local revenues of federal revenue sharing funds. Where land banking is used to purchase sites intended for *affordable housing*, two primary sources of funds are available.

   (a) Rural Land Purchase Fund. This relatively new California state program provides loans at below-market interest rates to local government agencies and nonprofit organizations for the purchase of land in rural areas for the development of housing for low-income persons. Loans are made for options on, or purchase of, unspecified sites (sites that have not been identified at the time the loan agreement is approved) and for specified sites. The loans may be made for up to three years. During this time borrowers are expected to obtain permanent financing from other sources, such as Housing and Urban Development (HUD) and Farmers Home Administration (FmHA). Paid-back loan monies are placed in the revolving fund for use elsewhere.

   (b) Community Development Block Grants (CDBG). The administration of this HUD program is soon to be taken over by state governments. Activities eligible for funding include acquisition of sites that can be used for assisted housing. Cities of less than 50,000 and counties of less than 200,000 population must compete for a limited amount of funds under the "small cities" discretionary element of the program.

Potential Benefits

1. Provides land for future public purposes at less than future market prices. Land can be acquired well in advance of need when prices are low.

2. Prevents further development of sites required for parks, open space, public housing, schools, or other public facilities.

3. Facilitates the provision of low- and moderate-income housing on less expensive, previously acquired lands. By being able to purchase developable land in advance, government agencies and local nonprofit housing corporations have important leverage needed to work with private and public housing interests to develop a variety of innovative affordable housing opportunities.

4. Affords more direct control over development in accordance with community goals by controlling the full and ultimate use of acquired lands through resale or leaseback subject to conditions.

5. By early acquisition of key parcels, the gains from public improvement decisions (such as the location of highways or transit lines) will benefit the public at large rather than the few landowners who hold the key sites.

Limitations

1. Unless federal or state seed or loan money is available, land banking may require considerable outlays of local funds, at least in the early stages of the program.

2. The role of anticipatory purchases by government and subsequent resale at a profit may be deemed by some as impermissible governmental activity. Moreover, there is no assurance that local decisionmakers would not succumb to political pressures in determining how to use acquired land.

3. Until resale occurs, land is removed from the tax rolls and governments may come under pressure to sell and develop land to increase revenues.

4. Land banking places the burden of property maintenance on government until resale occurs.

Legal Status

There appears to be no fundamental legal difficulty in the way of establishing a land bank. Where eminent domain is used, challenges usually question the validity of the public purpose for acquiring the land, and in California the phrase "public purpose," like "public welfare," has received a broad interpretation. Where land banking is used for affordable housing purposes, Article 34 of the state constitution could be a possible limitation. (Article 34 provides that a referendum must be held before a public agency can develop, construct, or acquire a low-rent housing project.) However, in the legal opinion of the state Department of Housing and Community Development, mere purchase of land is not "development" and communities may purchase and "bank" potential low-income housing sites without holding an Article 34 referendum.

Interrelationships

Agricultural buffers, land trust, urban area boundary, capital improvement program.

Experience

Limited. Communities have often purchased lands for public purposes (parks, fire and police stations) in advance of their need but generally have not purchased quantities of land for development control purposes; nor have they made much use of leaseback arrangements to preserve agricultural land. However, land banking for purposes of acquiring low-income housing sites is a common activity. In Northern California, with funds provided from the state Rural Land Purchase Fund and the federal CDBG program, local nonprofit housing development corporations are engaged in land banking activities in such counties as Butte, Lassen, Modoc, and Siskiyou, and in such cities as Chico, Cotati, Grass Valley, Novato, and Ukiah.

References

1. American Law Institute. *A Model Land Development Code: Proposed Official Draft: Complete Text and Commentary*, art. 6 (Philadelphia: American Law Institute, 1975).

2. California, Department of Housing and Community Development, *Housing Program Options for South Placer County* (Sacramento, November 1980).

3. Charles E. Roe, "Innovative Techniques to Preserve Rural Land Resources," *Environmental Affairs*, 5 (Summer 1976), 419-46.

LAND TRUST

Definition

A locally based, nonprofit, tax-exempt corporation legally empowered to accept and manage land for the purpose of preserving its open space and natural character. The sale or donation of land to a land trust involves the deeding of fee simple or development rights by a landowner to the trust for a specified use. The "use" to which the land is deeded can be highly flexible--it can be anything from an open space wildlife refuge to a ranch preserved for agricultural use or a neighborhood garden on an abandoned inner-city lot. Donors of land or easements reduce their property taxes and/or income and inheritance taxes while making valuable contributions to their community.

How It Works

1. Interested local residents (including farmers, conservationists, businesspersons, homemakers, etc.) organize a land trust under state law as a nonprofit corporation capable of receiving and managing land. The trust subsequently applies for tax-exempt status under Section 501(c)(3) of the U.S. Internal Revenue Code. The land trust is governed by a board of local residents responsible to the community. Besides its land preservation function, the conservation and land use related activities of the land trust can--within the context of its charitable character--be as wide or narrow as its members desire.

2. Land trust members work directly with local landowners, informing them of the purposes of the trust and the tax and other benefits to be gained by using the trust as a means of preserving their land in its present form. In general, land donated or sold at a reduced price to a land trust can afford the donor/seller considerable tax savings in property and federal estate taxes. In addition, when a land trust accepts full title or the development rights to land, the donor/seller may be able to deduct as a charitable contribution the difference between the cost to the trust (if any) and the "fair market value" of the land or easement. The deduction is dependent upon whether or not the contribution meets one of the several conservation purposes listed in the federal Minor Tax Treatment Act of 1980.

3. The land trust approaches land preservation in two ways:

   (a) The land trust buys or accepts the development rights to a particular parcel, and title to the land remains with the private landowners. Development rights are transferred to the trust through a conservation easement.

   (b) The land trust takes full title to the land through sale or donation. The trust may then hold and administer the land itself or it may transfer the land to a public agency for public use, such as a park, conservation area, etc. Through this latter method, the trust acts as a bridge between private citizens (or corporations) and government agencies.

4. Development restrictions are the essential part of a conservation easement; however, no set rule dictates the extent of such restrictions. The easement device is relatively flexible and can be written to include almost any kind of use or restriction agreed to by the owner and the land trust. The easement can prohibit development in some areas and provide for limited development in others, consistent with the needs of the landowner and the resources being protected. Unless otherwise specified, the easement does not grant access to the public.

5. Except for the specific restrictions agreed to in the easement, ownership prerogatives remain unchanged. The family still owns the land and can sell it, lease it, live on it, and use it in any way consistent with the terms of the agreement. The easement stays with the land and is legally binding on present and future owners alike.

6. The following are examples of how an easement to a land trust might occur:

   (a) The owner of a 200-acre farm wishes to continue farming and to preserve the land for farming uses by future generations. He deeds the development rights to the local land trust and in so doing gains in several ways: he is assured of the future preservation of his land; he may be able to claim the "fair market value" of the development rights as a charitable contribution; and he reduces the land's speculative value, thereby affecting appraisals for estate and inheritance tax purposes.

   (b) The owner of a forested ten-acre parcel on which her home is situated wishes to see the land remain in its natural state forever. She places her land under a conservation easement to be administered by the local land trust. She

is free to sell or will the land, but its natural state is permanently protected and she may be eligible for certain tax advantages.

(c) A developer wishes (or is able) to develop only part of a large natural area. He deeds the remainder of the parcel to the local land trust, thereby increasing the attractiveness of the development to the community (whose development approval he needs) and potential home buyers. The community receives permanent open space next to a developing area and the developer may gain a tax benefit.

Potential Benefits

1. Uses the incentives of tax benefits (and, perhaps more important, a wish to contribute to the community) to assure that farms, ecologically sensitive areas, and other open space lands will retain their present characteristics.

2. Eases the speculative pressures on productive lands and promotes their continued use for agriculture.

3. Provides an alternative and voluntary means for a community to seek to accomplish open space and resource preservation objectives.

4. Ensures that the land will remain in open space for perpetuity, something that local zoning regulations cannot guarantee.

Limitations

Establishment and operation of a local land trust requires information and skill, particularly in the explanation of tax benefits and negotiations with landowners over land donations and easement agreements. Not all donations of land or easements are eligible for charitable deductions and not all land or easements offered to a land trust should necessarily be accepted.

Legal Status

Accepted. California Civil Code Section 815.3 authorizes land trust-type organizations to acquire and hold conservation easements. The same law authorizes such easements to be acquired and held by city and county governments but prohibits the granting of development permits on the condition that such easements be granted.

Interrelationships

Agricultural buffers, agricultural use notice, planned unit development, hillside/slope zoning, stream/creek zoning.

Experience

In Northern California, land trusts are presently active in Humboldt, Marin, Mendicino, Monterey, Napa, San Mateo, Santa Clara, Santa Cruz, and Sonoma counties. The Sonoma land trust has recently become the first such trust in California to accept a conservation easement specifically designed to preserve agricultural land.

References

The Trust for Public Land, a private organization based in San Francisco, provides expert training and technical assistance to rural community groups wishing to develop land trusts for the preservation of agricultural, recreation, and other open space lands. The trust has a good deal of literature on the subject that it will send to interested individuals or groups. It has assisted in establishing nearly all of the land trusts presently operating in California. Its address is:

Trust for Public Land
82 Second Street
San Francisco, CA 94105
(415) 495-4014

Contacts: Ms. Jennie Gerard, Ms. Mary Lester

PERFORMANCE ZONING

Definition

A form of zoning in which the criteria for establishing districts and regulating land uses within districts are based primarily on performance rather than on use or design specifications. In other words, a performance zone is defined by a list of permitted impacts as opposed to a list of permitted uses. Performance zoning differs from traditional zoning in several important ways:

1. Traditional zoning establishes a large number of zoning districts and then lists those uses which may be placed in each zone. Performance zoning accomplishes spatial control of land uses with a minimum of zoning districts, and within those districts control is exercised by making each use pass a series of performance tests.

2. The basic assumption of traditional zoning is that different uses must be physically separate or distant from one another in order to protect them from one another. The basic assumption of performance zoning is that land uses should be separated only to the degree that they create negative impacts on their neighbors. Within districts, the more intense or nuisance-producing uses are required to "buffer" their impacts on adjacent and neighboring uses.

3. Under traditional zoning, a single zone may encompass a variety of environmental conditions with no provisions for reflecting those variations in the requirements. Performance zoning takes into account the capability of land resources to support proposed activities and allows development to occur only to the extent that it is consistent with well-defined environmental performance standards.

4. Traditional zoning establishes minimum standards which each use must follow, including setback, open space, drainage, parking, and landscape requirements. Performance zoning seeks to maximize freedom and flexibility by providing the landowner with many options as to how he may develop his land.

How It Works

1. Performance zoning can be used in a variety of situations to accomplish specific objectives, including the following:

(a) As a means of defining the types of manufacturing operations that may be permitted in a particular zone. This is the land use control area in which performance standards were first utilized; it makes unnecessary the listing of those manufacturing operations that are permitted in the zone. Operations are allowed on the basis of the amount of noise, smoke, odor, or other obnoxious elements associated with the manufacturing process. For each obnoxious element the ordinance establishes the criteria that must be met (e.g., maximum decibels or maximum odor) and the manner in which the element is to be measured.

(b) As a means of providing greater flexibility and cost reductions in subdivision design. For example, instead of having the ordinance specify that storm sewers are required, a performance standard is used that states the amount of runoff permitted and leaves the method to the developer. The developer can then choose the least costly option that is acceptable to the community. Drainage standards are maintained while development costs are lowered.

(c) As a means of expanding the variety of uses permitted in a particular district. For example, an ordinance of the city of Pasadena allows light industry to locate in a professional zone under specified performance criteria, including the following:

> Such uses shall be allowed only if they are conducted completely in structures with an office appearance, do not generate traffic substantially in excess of that which would be generated by business or professional office development of similar size, and are not dangerous or offensive by reason of the emission of dust, gas, smoke, noise, fumes, odors, vibrations, or otherwise.

(d) As a means of determining appropriate density and establishing development standards in sensitive areas. For example, the Public Health and Safety Excessive Slopes District ordinance of the city of Anderson, California, bases the minimum lot size and maximum percent of the lot that may be covered on the maximum slope of the building site.

(e) As a means of implementing a community's entire land use program. Bay City, Oregon, a small rural community of 1,000 persons located on Tillamook Bay on the Northern Oregon coast, has adopted performance zoning as its basic planning and land use control mechanism. The city is divided into three intensity zones, based on the physical characteristics of each zone: high (commercial), moderate (residential), and low (rural). Within each zone uses are permitted on the basis of their impacts on the environment and on the other uses. Other features of the Bay City Performance Zoning ordinance include:

--Buffers and screens to provide necessary protection between nonresidential and residential uses

--A hazard overlay zone to apply additional precautions in areas subject to flooding or landslides

--Restriction of certain activities that generate high traffic to sites that have adequate access to critical roads

--A bonus density system to encourage certain desirable development characteristics

2. There must be a clear connection between community objectives and the established performance standards. Planners and both appointed and elected officials should strive to understand what they are trying to achieve in terms of a living and working environment and to what extent the performance standards can help to bring about those results.

3. A good data base is required, particularly in sensitive or hazardous areas, so that appropriate standards can be established and compliance with standards can be measured and enforced.

4. Performance standards may be applied to existing zoning districts without altering their geometric form. Only the range of allowable uses and area requirements are changed to reflect performance criteria.

5. The introduction of performance zoning will require an educational effort in the community among planning staff, commissioners, appointed and elected officials, and interested residents. Performance zoning can be phased in by utilizing performance standards in such areas as planned unit development guidelines, industrial districts, and sensitive area overlay zones. Familiarity with the concept

can lead to a desire to see its use extended to other elements of the land management process.

Potential Benefits

1. Requires minimum of zoning districts and provides increased choice within districts; among other advantages, this should reduce the need for variances and zoning changes.

2. Land uses are separated only to the degree that they create negative impacts on neighbors.

3. Takes into account the capability of land to support proposed activities and permits development to occur only to the extent that it is consistent with defined standards.

4. Moves away from fixed requirements and seeks to maximize freedom and flexibility by providing the landowner with many options in developing his land.

Limitations

1. Depending on the nature of the performance standards utilized, various degrees of skill may be necessary in their administration. In general, the complexity of the standards should reflect the capabilities of the administering authorities. In small communities, where expertise is probably limited, it may be desirable to adopt standards that are of a more detailed and less subjective nature (yet not so detailed as to negate the benefits of this flexible technique).

2. Land capability standards require very specific technical information describing such things as erosion potential, protection of ground water supplies, and flood hazards. Once the standards are in place, prospective developers can be required to collect the information necessary for decisionmakers to assess compliance with them.

3. Performance zoning districts may not be appropriate in built-up residential areas where neighborhoods are stable and the only likely development is the addition of rooms or garages.

Legal Status

Accepted. Performance standards challenged in California courts will almost certainly be upheld if they have been properly drafted and adequate reasons have been provided to justify them.

Interrelationships

Cluster development, planned unit development, hillside/slope zoning, woodlands protection zoning, stream/creek zoning, agricultural buffers.

Experience

Of growing use throughout the country, particularly in the regulation of sensitive areas, in implementing planned unit development and subdivision design standards and in enlarging the range of uses in particular zones. Noted examples of community-wide performance zoning include Lake County, Illinois; Bucks County, Pennsylvania; Gay Head, Massachusetts; and Bay City, Oregon. It is presently being considered for the town of Paradise, California.

References

1. American Planning Association, *Performance Standards in Industrial Zoning*, Planning Advisory Service Report No. 32 (Washington, D.C., 1951).

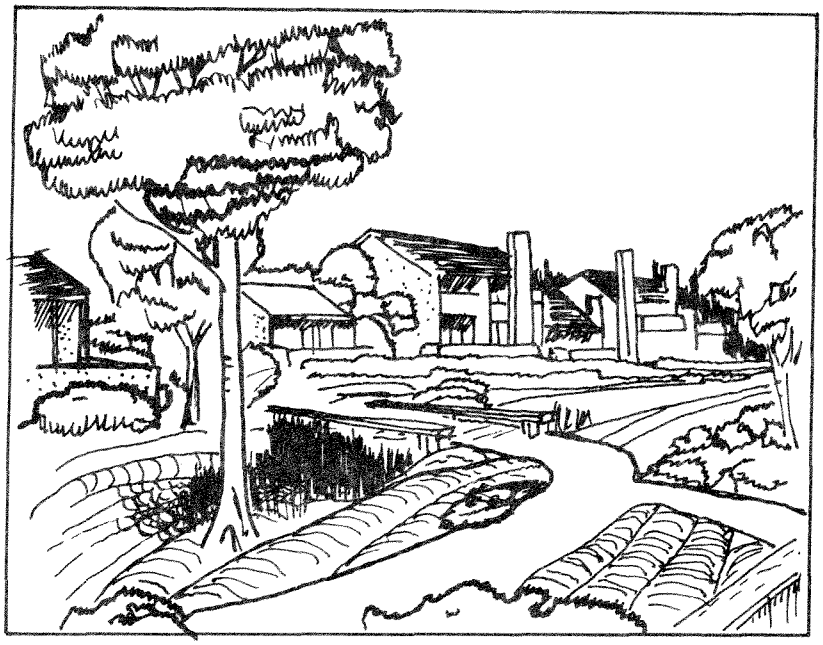
2. Lane Kendig, *Performance Zoning* (Chicago: Planners Press, 1980).

3. Kevin Lynch, "Performance Zoning: The Small Town of Gay Head, Massachusetts, Tries It," *Planners Notebook* (October 1973).

4. *Performance Standards: A Technique for Controlling Land Use*, Special Report 424 (Corvallis, Ore.: Oregon State University Extension Service, November 1974).

5. *Performance Zoning: An Option for a Small Oregon City*, Extension Circular 963 (Corvallis, Ore.: Oregon State University Extension Service, March 1979).

6. Kirk Wickersham, Jr., *The Permit System: A Guide to Reforming Your Community's Development Regulations* (Boulder, Colo.: Indian Peaks, 1981).



PLANNED UNIT DEVELOPMENT (PUD)

Definition

A device that allows a development to be planned and built as a unit and that as a result permits variation in many of the traditional controls related to density, land use, setbacks, open space and other design elements, and the timing and sequencing of the development. An integral part of PUD is cluster development, under which housing units are grouped to allow for communal open space and economies of development. PUD permits flexibility in site design, mixtures of housing types, the combining of housing with such ancillary uses as neighborhood shopping centers, better design and arrangement of open space, and retention of such natural features as flood plains or steep slopes. It offers greater opportunities for providing lower-cost housing along with conventional housing.

How It Works

1. PUD is usually administered through a "floating zone" (a fully described zoning classification that is allowed to "float" instead of being pinned down to a specified area in advance) or through a special permit (generally as a conditional use). In some cases a PUD district is fixed in advance on the zoning map. PUDs can be required for specific areas--steep slopes,

rural areas, wet soils--where the terrain requires special consideration, including the necessity of clustering structures on only part of the site.

2. Regardless of how the PUD is initiated, fundamental to the PUD process is site plan review by the planning commission. It is the primary means used to implement the objectives of PUD.

3. PUD design standards--including lot size building placement, traffic circulation, parking, street width, and perimeter design--are usually handled in one of three ways:

   (a) Use of traditional preset standards. (However, if standards are too rigid they may be inappropriate for the site and get in the way of creative design.)

   (b) Use of ambiguous policy statements in place of clear standards, leaving specifics to be worked out in negotiations between the developer and the planning commissioners at the time of each application. (This could lead to arbitrary decisionmaking on the part of local officials.)

   (c) Use of performance standards, leaving the developer free to pursue a variety of options while still providing guidance toward desirable community objectives. (This approach usually requires some degree of expertise on the part of the project reviewers.)

   In general, a balance is called for among these three approaches; the degree of standard-setting should reflect the qualifications of the reviewing authorities. In smaller communities, where expertise is limited or not available, it may be desirable to adopt a more detailed ordinance, although not so detailed that innovation is stifled or that the standards are not appropriate for the site.

4. In addition to the above standards, preparing a PUD ordinance calls for local answers to the following questions:

   (a) <u>What is an appropriate parcel size for a PUD</u>? Planners disagree about what constitutes an appropriately sized PUD. A survey by the American Society of Planning Officials found that a majority of planners who responded preferred a minimum requirement of five acres or less, with two acres approximately the bottom limit.

   (b) <u>How should density be awarded</u>? Most ordinances that treat the PUD as a "floating zone" or as a conditional use specify density based on the standard zoning districts in which PUDs are allowed; however, a form of

density transfer provides for a reduction in lot sizes to permit the clustering of dwelling units, usually in exchange for common open space. In other ordinances, higher densities are granted to PUDs as a matter of right (in order to encourage this form of development) or as a bonus in return for developer agreement to comply with certain ordinances or other criteria.

(c) How much open space should be required? Most PUD ordinances calculate open space as percentages or ratios of gross or net project area (e.g., "Required open space shall comprise at least 40 percent of the total gross area."). In general, open space should not include any physical structures and should be usable for recreational activities.

(d) How should commonly owned property in the PUD be administered? The predominant technique for managing commonly owned property is the homeowners' association. The local government needs some basic assurances, however, that the association has a reasonable chance of success and will be capable of performing its important function.

5. Where the PUD allows for mixed use development, residential uses can be combined with retail office, entertainment, and sometimes light industrial activities.

Potential Benefits

1. Permits mixed uses, densities, building types, and income ranges.

2. Encourages increased innovation and design creativity.

3. Encourages cluster development, with its reduced need for infrastructure and streets, thereby reducing unit housing costs and preserving open space.

4. Allows and encourages development that is more sensitive to the natural surroundings.

5. Provides for extensive site plan review and the conditioning of approval on the developer's acceptance of relevant conditions.

6. Provides neighborhood open space at no government cost or government maintenance expense.

7. Provides a procedure for dealing with sensitive, small-scale problem locations.

Limitations

1. Usually results in increased up-front planning costs in site planning, design, and engineering.

2. Where the PUD plan also constitutes the PUD zone, a change in the plan will require a change in the zoning.

3. May increase the processing time for development approval unless administrative changes are made to simplify and speed up the process.

Legal Status

Accepted. State law merely defines the outer limits of what will be included as a PUD or homeowners' association. Localities are then left to develop a more local approach to formulate the ordinance.

Interrelationships

Cluster development, conditional rezoning, performance zoning, zero lot line housing, agricultural buffers, stream/creek zoning, hillside/slope zoning, woodlands protection zoning.

Experience

Widespread, particularly where limited to residential uses.

References

1. American Planning Association (APA), *Homeowners' Associations: Problems and Remedies*, Planning Advisory Service Report No. 337 (Washington, D.C., October 1978).

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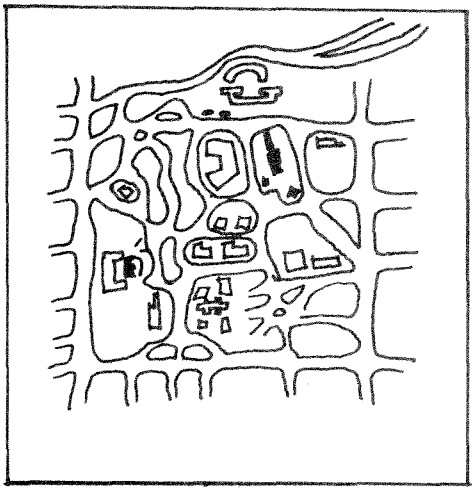
3. California, Department of Housing and Community Development, *PUD: Planned Unit Development Ordinances and Their Use in California* (Sacramento, 1973).

4. California, Office of Planning and Research, *Mixed Use Development: Bringing Jobs and Housing Together* (Sacramento, 1981).

5. National Association of Home Builders, *Land Development 2*, rev. ed of *Land Development Manual*, 1974 (Washington, D.C., 1981) [Address: 15th and M Streets, N.W., Washington, D.C. 20005].



SPECIFIC PLAN

Definition

A complement to the general plan, it is used in a more specific geographic area, where it combines in one document the planning objectives for the area and the implementation techniques necessary to achieve them. The specific plan is authorized by California Government Code Section 65451 and must contain measures to implement the policies required in the community's general plan that pertain to the area. It enables the community to design a detailed plan that coordinates public and private efforts in the development of a particular area. The specific plan can be adopted by either resolution or ordinance. Once adopted, no subdivision map or capital facilities may be approved for the area unless found in conformity with the plan.

How It Works

1. The majority of specific plans originate with the planning commission, sometimes at the request of landowners or developers in the area. Participants involved in preparing the specific plan include area property owners, developers, local officials, utility companies, and adjacent residents. Preparation of a specific plan is an excellent way to bring together the property owners and developers in an area and have them agree on the ground rules for the area's development.

2. Under state law the specific plan must contain measures to implement all the policies required in the general plan that pertain to the area, including "regulations, conditions, programs, and proposed legislation" regarding:

(a) The location of, and standards for, land uses and facilities

(b) The location of, and standards for, streets, roads, and other transportation facilities

(c) Standards for population density and building intensity and provisions for supporting services

(d) Standards for the conservation, development, and use of natural resources

(e) Provisions for implementing the open space elements

(f) Other appropriate measures

3. Specific plans can be used in a variety of ways and in both large and small areas. They have been used for neighborhood and community plans and for large development projects; they have also guided development of industrial and commercial centers and created design and development standards in transitional areas.

4. State law allows for a locality to adopt one master EIR for a specific plan and eliminates all future environmental review on individual residential projects (California Government Code Section 65453b).

5. The specific plan may be adopted by resolution or ordinance following public hearings by the planning commission and legislative body. Once adopted, no subdivision map or capital facilities may be approved for the area unless found in conformity with it. The plan may be administered separately, or, more likely, through the usual land use administration process.

6. Specific plans are usually financed with general funds except where a developer initiates the process. Recognizing the savings to developers in reduced environmental impact analysis, state law allows the locality to charge developers seeking governmental approvals a prorated fee based on the benefit received from the plan (California Government Code Section 65453a).

Potential Benefits

1. Allows local officials, working with property owners, developers, and other interested parties, to preplan an area slated for future growth and to establish the standards and procedures under which development is to take place.

2. Provides an area in which design innovations can be encouraged, such as natural drainage, reduced street size, zero lot line housing, and performance zoning.

3. The preparation of a single EIR for the entire specific plan area avoids the time and cost involved in preparing and processing many EIRs for individual projects. In addition, because the plan establishes overall design and development standards for the entire area, site plan reviews can be efficiently handled, often by the planning staff.

4. Can relate to local conditions that cannot be fully addressed by zoning. Whereas zoning regulations must be applied broadly through the community, a specific plan can be designed to protect particular natural features or conditions such as historic resources, blufftops, or natural trailways.

Limitations

1. Will require additional expenditures for preparation, although some or all of the costs can be recovered from developer interests.

2. As the market changes, developers may not wish to be locked into the established plan, and requests for amendments will follow.

Legal Status

Provided for by state law, California Government Code Sections 65450 et seq. The specific plan must be consistent with the general plan; in order for it to be adopted, the community must have a completed general plan.

Interrelationships

Area plan, capital improvement program, conditional rezoning, urban area boundary, performance zoning, streamlining land use regulation.

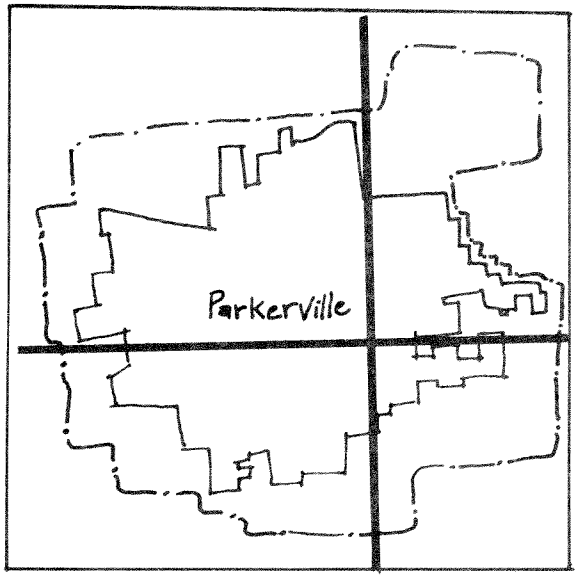
Experience

Widespread use by California cities and counties. Numerous examples are provided in the OPR publication listed below.

References

1. California, Office of Planning and Research, *Specific Plans: How Some California Communities Use Them* (Sacramento, 1981).

2. Paul H. Sedway, "Plan-Based Administrative Review: A Planning and Zoning Detente," *Land Use and Zoning Digest*, 33 (October 1980), 95-98.



SPHERE OF INFLUENCE DESIGNATION

Definition

A sphere of influence is a plan describing the probable ultimate physical boundary and service area of a local government agency. Under California Government Code Section 54773, the Local Agency Formation Commission (LAFCO)* of each county is to "develop and determine the sphere of influence of each governmental agency within the county" (basically cities and special districts). Major purposes of designating spheres of influence are to discourage urban sprawl (particularly over productive agricultural land) and to promote the efficient delivery of governmental services. Once established, the sphere of influence constitutes a declaration of policy that is a primary guide to LAFCO in its determination of any proposal concerning territory adjacent to a city or special district.

How It Works

1. The sphere of influence document is prepared by LAFCO in close cooperation with the city or special district involved.

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*LAFCO is a county-wide agency composed of representatives of the county and the cities and special districts within the county. It has the authority to approve or disapprove the creation of new cities, the establishment and expansion of special districts, and the annexation of land to existing cities.

2. In determining the sphere of influence, LAFCO must consider and prepare written findings for each of the following factors (California Government Code Section 54774):

   (a) The maximum possible service area of the agency, based upon present and possible service capabilities of the agency

   (b) The range of services the agency is providing or could provide

   (c) The projected future population growth of the area

   (d) The type of development occurring or planned for the area, including but not limited to residential, commercial, and industrial development

   (e) The present and probable future service needs of the area

   (f) Local government agencies presently providing services to the area and the present level, range, and adequacy of services provided by such agencies

3. In general, the sphere of influence should be consistent with the unincorporated area included in the city's general plan.

4. Designation of a sphere of influence requires the preparation of an environmental impact report.

5. For the sphere of influence to be effective, development policies set forth for the county general plan should be consistent with policies set forth in the sphere of influence plan.

6. LAFCO is obligated to periodically review and update the spheres of influence that it has developed.

Potential Benefits

1. Identifies areas around cities where growth should occur and encourages cities and counties to coordinate plans and policies affecting land use in such areas.

2. When respected by county decisionmakers, sphere designations should discourage urban sprawl and encourage the orderly growth of incorporated areas.

3. Obligates LAFCO to reject proposals for local government changes in fringe areas that would be incompatible with later

city annexations within the designated sphere of influence (e.g.,Q establishment of a new special district).

4. A city's declaration, through its sphere of influence, that it has no intention of annexing agricultural land on its fringe may reduce development pressures on such land.

5. Provides the time and motivation for a city to begin serious planning for the orderly expansion of its urban services.

6. Provides much of the basic information necessary for the development of an area boundary line for an incorporated area.

Limitations

The benefits of a sphere of influence for a city can be negated by county land use decisions inconsistent with sphere policies.

Legal Status

Required by law. In a 1977 opinion, the California attorney general held that although the legislature did not set a specific timetable for adoption of spheres, a reasonable time for this adoption had long passed. (60 Op. Cal Atty. Gen. 118 [1977]). While LAFCO is required by law to consider any applicable sphere of influence, in reviewing a boundary proposal (California Government Code Section 54796), a board of supervisors is under no such requirement in its determination of land use applications.

Interrelationships

Urban area boundary, capital improvement program, fiscal impact analysis.

Experience

Widespread.

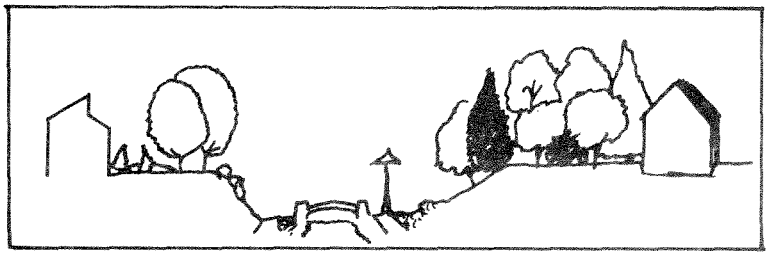
References

1. John Martin Eells, *LAFCO Spheres of Influence: Effective Planning for the Urban Fringe* (Bevkeley: Institute of Governmental Studies, University of California, 1977).

2. *General Policies and Criteria for the Development and Determination of Spheres of Influence* (San Mateo Local Agency Formation Commission, 1975).

3. *Red Bluff, California, Sphere of Influence and Associated EIR* (Tehama County Local Agency Formation Commission, 1980).

4. Alvin D. Sokolow, Priscilla Hanford, Joan Hogan, and Linda Martin, *Choices for the Unincorporated Community: A Guide to Local Government Alternatives in California* (Davis, Calif.: Institute of Governmental Affairs, University of California, September 1981).



STREAM/CREEK ZONING

Definition

A variation of traditional zoning in which special standards are applied to development in the proximity of streams and creeks. The standards are intended to preserve the natural character and aesthetic qualities of the watercourse, maintain utility for the purpose of stormwater drainage and possibly for drinking water, and ensure the safety of development within the flood-prone areas.

How It Works

1. Stream/creek zoning is usually initiated by a community to preserve the stream/creek environment while allowing for carefully regulated development. Ideally, stream/creek zoning is adopted before development pressures occur along the watercourse rather than in response to development pressures.

2. Standards are adopted that will protect the characteristics of the stream or creek by regulating development on lands in the vicinity of the watercourse. The standards are specific for each community and reflect many factors, including stream or creek size, existing land use, topography, vegetation, and flow. Criteria to be used in determining standards for stream/creek zoning include:

   (a) Limitation on channelization, damming, bank modification, or other alterations in the course or flow of the stream or creek

   (b) Required restriction of areas in the flood plain to a non-buildable status

   (c) Setback from top of bank to avoid erosion

   (d) Standards for septic systems to avoid seepage and contamination of water

(e) Visual and physical access

(f) Limited density to minimize impact

(g) Restriction on impervious surfaces and standards for handling runoff and drainage

(h) Requirements for vegetation to provide bank stability, minimize erosion, and reduce runoff

3. The zoning may be in the form of performance standards ("The development shall be fitted to the topography to create the least erosion potential") or may establish specific design criteria ("No structure or parts of structures shall overhang, project, or intrude into the 100-yard floodway") or both.

4. Stream/creek zoning can be implemented in a variety of ways. The two most common means of implementation are as follows:

(a) Establishment of an "overlay" zone in which specific or performance standards are applied to development occurring in designated stream or creek areas. Compliance with the overlay standards is in addition to compliance with the regulations for the existing zoning district. In cases of conflict, the standards included in the overlay zone take precedence.

(b) Establishment of a stream/creek zoning district in which the standards for the zone constitute the sole criteria for development in the geographic area covered by the zone.

5. Open-space oriented cluster developments and planned unit developments should be encouraged in developments adjoining natural streams and creeks.

6. There is no need to set up a separate administrative process to handle stream/creek zoning. It can be integrated into the processes currently utilized for traditional zoning. Project review can be administrative, by special committee, or by the planning commission.

Potential Benefits

1. Preserves the stream/creek as a community resource.

2. Provides continued storm drainage capacity.

3. Minimizes erosion and destruction of adjacent properties.

4. Encourages development that is compatible with the environment.

5. Provides methods of preserving physical and visual stream access.

Limitations

1. Adequate data is required, including information on flooding potential, vegetation, soils, and drainage capacity. The applicant should be required to provide sufficient information so that compliance with the standards can be enforced.

2. To be fully effective, the same standards should apply to the length of the stream or creek, regardless of jurisdictional limits.

Legal Status

Accepted. See *Turner* v. *County of Del Norte*, 24 Cal. App. 3d 311 (Ct. App. 1972), upholding strict limitations on development in a flood plain.

Interrelationships

Performance zoning, planned unit development, cluster development, conditional rezoning, woodlands protection zoning.

Experience

Sacramento County's Natural Streams Combining Zone ordinance constitutes an overlay zone affecting a total of thirteen creeks and sloughs in the unincorporated area of the county. All new development in the area is subject to conditional use permits and construction must comply with the development standards of the Natural Streams Zone as well as those set forth in the underlying zone. An ordinance of the city of San Anselmo prohibits construction of any structure within ten feet of the "top of the banks" of Sleepy Hollow or of San Anselmo Creek, establishes minimum distances between structures on opposite banks of the creeks, and provides for minimum channel widths. Napa County's overlay ordinance requires a special permit to develop a project within the floodplain of the Napa River or to remove any riparian cover along any of the fifty or so creeks named in the ordinance. The standards for granting the permit are set forth in the ordinance. The city of Visalia's Northeast Area Specific Plan requires that cluster development

take place along the waterways in the plan area and that the face of the developments be oriented toward the stream or creek rather than back on the waterway.

References

1. American Planning Association (APA), *Caring for the Land: Environmental Principles for Site Design and Review*, Planning Advisory Report No. 328 (Washington, D.C., June 1977).

2. APA, *Performance Controls for Sensitive Lands*, Planning Advisory Service Report Nos. 307 and 308 (Washington, D.C., June 1975).

3. California, Coastal Commission, *Model Watershed and Habitat Protection Ordinance*, formulated for Long Beach, Calif., suppl. to *Local Coastal Program Manual*, 1977 (San Francisco, 1980).

4. California, Department of Fish and Game, Region 3, *Model Riparian Ordinance*, submitted to the Coastal Conservancy (Yountville, Calif., April 1, 1980).

5. Lane Kendig, *Performance Zoning* (Chicago: Planners Press, 1980).

STREAMLINING LAND USE REVIEW

Definition

The review and modification of land use regulation procedures with the goal of moving toward simpler, more efficient, and cost-effective ways to administer land use applications.

How It Works

Planning commissioners, planning staff, and other community representatives review the process by which land use applications are handled and determine ways in which the process can be simplified and made less time-consuming and more efficient. To start, reviewers might wish to compare the practices of their community with the following approaches that have been adopted by other jurisdictions.

1. Facilitate permit gathering. Centralize counter service where--at one place--an applicant can either pick up the multiple permits needed for a development or receive the necessary information as to where and how to obtain the permits. Under California Government Code Section 65913.3, as of January 1, 1983, every city and county will be required to coordinate its review and decisionmaking and provide information regarding the status of permits and applications for residential development by a single person or agency.

2. Hold pre-application conferences. Encourage representatives of various departments of the locality to meet with permit applicants to make sure that permit requirements and procedures are clearly understood and to provide informal suggestions regarding proposed projects and site plans. Such conferences will be especially helpful for proponents of larger developments, applicants who are not familiar with the development process, and individuals whose projects contain innovative designs.

3. Prepare explanatory materials. Prepare and make available manuals or handouts intended to help applicants, commissioners, and citizens understand the regulations and procedures involved in obtaining land use permits. The materials should explain each kind of permit (including rezoning amendments) and outline the procedures that must be followed, utilizing process diagrams wherever possible. A manual will generally include some information about a wide variety of permits, whereas a handout is usually more specific and describes the requirements and procedures involved in

obtaining one particular type of permit. University student interns or local civic group members (including senior citizen group members) may be available to help to prepare such materials.

4. Reduce processing time. Whenever possible, an attempt should be made to reduce the time required for processing development applications, including the time required by hearing authorities to reach decisions. Many communities establish time limits within which certain steps or decisions must be completed.

   The Department of Planning and Land Use in San Diego County uses a monthly "Project Processing Control Center Report" to keep track of the time required to complete each stage in processing of rezones, tentative maps, tentative parcel maps, and major use permits. The report lists the "target days" for each stage (e.g., review by Public Works or by the environmental review board), the average time required for completion, the highest and lowest number of days required for completion, and the percentage of applications that were "over target." The report enables the department to assess the work flow, locate bottlenecks, determine where additional assistance might be necessary, and reexamine target days for possible increase or decrease in their number.

PROJECT PROCESSING CONTROL CENTER REPORT

Tentative Parcel Maps

Operation	No. Cases	Target Days	Average	High	Low	% Over Target
Fees to Distribution	44	7	3.5	6	1	0%
Distribution to EAD Completion	42	30	21.2	45	15	2
ERB to Action	39	40	34.1	49	21	2
Dept. of Public Works	66	30	26.3	41	15	12
Health Dept.	61	30	8.8	11	2	0

Reporting Period July 1 through July 31, 1981

The state Subdivision Map Act and the Permit Streamlining Act set forth *maximum time limits* that must be observed by city and county governments:

(a) Within thirty days after receiving an application for a development project the locality must inform the applicant whether or not the application is complete; otherwise the application is deemed to be completed.

(b) [1.] Where the planning commission makes recommendations on *tentative subdivision maps*, it must make its written report to the legislative body within 30 days after the filing of the *complete* tentative map with the clerk; after receiving the planning commission's report, the legislative body has thirty days to make its decision.

[2.] Where the planning commission is authorized to approve or disapprove a tentative map, it must make its decision within fifty days after the filing with the clerk.

If the commission or legislative body fails to decide within the maximum time period, the tentative map is "deemed to be approved." However, the city or county may require that the Environmental Impact Report (EIR) be completed before accepting the application as complete.

(c) Applications other than tentative maps must be approved by the city or county within one year from the date the application was accepted as complete. However, if the local ordinance requires that a particular permit be decided upon within a period of less than six months, the locality can require that the EIR be completed prior to accepting the application as complete.

(d) The locality is required to complete and certify for private projects an EIR within one year or complete a Negative Declaration within 105 days.

(e) All one-year time limits may be extended once for a period not to exceed ninety days upon consent of the locality and the applicant.

5. Establish a joint review committee. Where several departments are involved in the approval of larger projects, rather than route the plans or applications among them for review and comment, establish a joint review committee composed of staff from each of the departments. The committee should be assigned to meet regularly, go over proposals, and jointly solve problems. The developer may or may not be invited to attend committee meetings.

6. Expand planning staff responsibilities. Review planning commission agendas to determine which decision items might be more appropriately handled by planning staff. In the city of Chico, for example, the planning director, pursuant to clear standards, is authorized to approve "minor" use permit applications, including applications for fences taller than specified heights and for the keeping of certain animals. Other examples are applications for the placement of transplanted buildings or structures or for temporary subdivision sales offices; for encroachments within a required setback area; and for the outside sale and display of merchandise in certain districts.

7. Reduce review steps. Seek to eliminate certain steps or reviews which an applicant is now required to go through. Here are some possibilities:

   (a) Authorize the planning commission to approve, approve on condition, or deny tentative subdivision maps rather than merely make a recommendation to the legislative body. This eliminates the need for an additional review and public hearing before the city council or board of supervisors (which can still review the matter on appeal).

   (b) The city of Chico provides that the planning director may approve parcel splits under a Minor Land Division proceeding with right of appeal to the planning commission. Neighboring landowners are notified but no public hearing is held unless one is requested. If a property owner wishes to file a parcel map, the matter is heard before the planning commission.

   (c) Combine in one proceeding a general plan amendment and the associated rezoning.

   (d) Allow concurrent processing of zone changes and tentative maps.

   (e) Prepare a master Environmental Impact Report, as provided by the California Environmental Quality Act (CEQA), so that procedural delays associated with EIR preparation/review can be minimized without sacrificing the intent of CEQA.

8. Use "findings of fact" forms. With the aid of the city or county attorney, prepare a form which will help the planning commission and legislative body determine the findings of fact necessary to support the approval or denial of a land use application. The law in California requires that in proceedings involving variances, use permits, tentative maps,

Petition For A Zoning Variance
Pursuant to Chico Municipal Code Chapter 19.48

For property located at

After reviewing the application and hearing all of the evidence, the Chico Planning Commission has determined the following findings of fact:

1. That the exceptional or extraordinary circumstances or conditions that apply to the land, building, or use in question that do not apply generally to other land, buildings, or uses in the same districts are as follows:

_____

_____

_____

2. The granting of the variance (is/is not) necessary for the preservation and enjoyment of substantial property rights because:

_____

_____

_____

3. The granting of the variance (will/will not) adversely affect the neighborhood or be detrimental to public health, safety, or welfare, or adversely affect property or improvements in the neighborhood because:

_____

_____

_____

Based upon the above findings of fact, the Planning Commission has determined that the Variance shall be (granted - denied).

Dated:_____

Williamson Act withdrawals, and other non-legislative decisions, the decisionmaking bodies must make findings that disclose the actual bases for their decisions and that are sufficient to permit intelligent judicial review. (See: *Topanga Association for a Scenic Community* v. *County of Los Angeles*, 113 Cal. Rptr. 836 [1974]).

The use of a prepared findings of fact form enables the planning commission or legislative body to quickly focus upon the essential elements of the application proceeding, provides greater fairness for all, and, if proper findings of fact are made, ensures that the decision will not be overturned on review.

The findings of fact form on the following page was prepared by the city of Chico for use by the Chico Planning Commission in its consideration of zoning variance applications.

9. Facilitate use of planned unit development and cluster development. Allow planned unit development and cluster development as conditional uses or uses as of right of particular zones. This reduces the time necessary to obtain a rezoning, yet continues to provide the planning commission with site plan review authority.

10. Make use of specific plans. Preparation of a specific plan should result in a more rapid development process for several reasons:

    (a) The preparation of a single EIR for entire specific plan area avoids the time and cost involved in preparing and processing many EIRs for individual projects.

    (b) By establishing development standards for the entire plan area at one time, the need for additional review is minimized and necessary site plan reviews can be handled by the planning staff.

    (c) The developer is provided with a clear indication of what is expected and can undertake the project with a minimum of delay.

11. Initiate a planning commission education program. Ensure that planning commissioners are familiar with local planning objectives and the techniques (e.g., zoning and subdivision ordinances, capital improvement program) used to achieve them. As the planning process becomes more complex in terms of volume, techniques, and required information, commissioners need to be better informed in order to remain effective. At a minimum, commissioners should be provided with copies of the general plan, the major implementation ordinances, the capital

improvement program, and a guidebook explaining the planning process and the role of the planning commission in that process. (An excellent guidebook is Albert Solnit, *The Job of the Planning Commissioner*, 3d ed. [Belmont, Calif.: Wadsworth Publishing Co., 1982].) Look into the possibility of regular educational meetings between the planning commission and planning staff and/or other knowledgeable individuals.

Potential Benefits

1. Can help simplify and clarify the development process for the benefit of applicants, decisionmakers, and community residents.

2. Can help cut costs engendered by delays and uncertainty.

3. Enables planning staff to handle minor land use applications, allowing the planning commission more time to focus on long-range planning and the review of rezonings and other development proposals.

Limitations

1. Unless sufficient resources are available, tight deadlines can place a great deal of pressure on staff personnel and review authorities.

2. A speed-up of the review process may affect some of the "benefits of delay," including increased public participation in decisionmaking and adequate time for information gathering before decisions are made.

Legal Status

Accepted. None of the proposals discussed should raise legal problems.

Interrelationships

Cluster development, design standards review, planned unit development, specific plan.

Experience

Some of the cities and counties utilizing streamlining techniques are mentioned in the How It Works section, above. A model zoning ordinance to implement the Permit Streamlining Act (AB 884) is being prepared by the Office of Planning and Research (OPR); the ordinance is designed to be incorporated directly into local land use ordinances. In general, OPR is available to assist communities with permit streamlining problems. Specific plans are in use in a large number of California jurisdictions and are more fully described elsewhere in this publication. The county of Sacramento and the city of Santa Cruz have prepared guides to the development processes in their communities that can be used as models for more modest local efforts. The city of Visalia distributes a series of brief, attractively illustrated handouts that discuss the requirements for particular zones, landscaping standards, parking and sign ordinance standards, and other land use related subjects.

References

1. California, Office of Planning and Research, *State of California Permit Guidelines* (Sacramento, March 1980).

2. City of Santa Cruz, Planning and Community Development Department, *Planning Procedures Manual* (undated).

3. Sacramento County, Office of Economic Development, *A Guide to Development Regulations in Sacramento* (Sacramento, January 1981).

4. Frank S. So, "Tips on Cutting the Delays of Regulation," *Planning* 44 (October 1978), 26-30.

5. U.S., Department of Housing and Urban Development, *Streamlining Land Use Regulation: A Guidebook for Local Government* (Washington, D.C.: U.S. Government Printing Office, November 1980).

URBAN AREA BOUNDARY

Definition

A planning device that defines the ultimate growth area around incorporated cities, within which the cities and the county seek to cooperate in matters affecting land development. County land use policies are designed to discourage urban-type growth from occurring outside of urban area boundaries. Some communities establish several lines within the urban area boundary, intending them to correspond with the phasing of growth over an extended period of time.

How It Works

1. The county frequently plays the leading role in drawing urban area boundaries, working closely with the LAFCO and the incorporated cities. The adoption of an urban area boundary is usually linked with the designation by LAFCO of that city's sphere of influence; in most instances the boundary will be consistent with the sphere of influence.

2. Urban area boundaries may also be adopted for existing unincorporated urban areas in the county where additional growth can take place without interfering with agricultural and other rural values.

3. Establishment of an urban area boundary will generally proceed along the following lines:

   (a) Population growth is projected over a specific time period. The population forecast is then used as a basis on which to predict land demand within the urban area.

   (b) The boundary is drawn in conformity with planning criteria, employing natural physical barriers and existing road patterns where possible. Planning objectives may include the promotion of contiguous and fiscally sound growth along with protection of open space and agricultural lands, scenic corridors, environmentally sensitive areas, and archeological and historic sites.

   (c) The boundary is related to the projected ultimate service area of the city as determined in its general plan.

(d) The boundary should include land necessary to fill in and complete existing neighborhoods while utilizing existing public investments to the fullest.

(e) The boundary is drawn so as to minimize urban interference with agricultural or other resource uses. Where necessary, low-density development is proposed for the boundary's edge.

4. The urban area boundary may be included in the county's general plan as a separate element (encompassing all such boundaries established in the county) or as part of the land use or open space elements. The urban area boundary is also included in the general plan of the incorporated city.

5. County and city land use and city annexation decisions should be consistent with boundary policies. In most instances development in the boundary area will be annexed to the city. Where that is not the case, the county should forward to the city for comment any request for development within the city's urban area boundary and utilize such comments in its decision to approve or deny the proposal. This is the arrangement in effect between Tulare County and its incorporated cities.

Potential Benefits

1. Unlike the sphere of influence designation, it commits the *county* to the policy that urban development take place in locations where urban services can be provided in the most efficient and economical manner.

2. Preserves agricultural, forested, and open space lands outside the boundary area while reducing leapfrog development.

3. Lessens uncertainty about future urban use, thus reducing the amount of long-term speculation and development buying in fringe areas not designated for future urban development.

4. Allows county officials to concern themselves primarily with the delivery of *rural* services.

Limitations

1. To the extent that adoption of an urban area boundary reduces the supply of developable land, it could lead to higher land prices. Planning policies may need to be adopted to assure that such goals as providing affordable housing are not compromised.

2. Potentially shifts land values from rural to urban service areas, creating political problems.

3. After the boundary is adopted, county decisionmakers may face pressure from those seeking to develop within the urban area boundary at a time or in a place not acceptable to the city.

Legal Status

Accepted.

Interrelationships

Sphere of influence, capital improvement program, fiscal impact analysis, agricultural buffers.

Experience

Of growing utilization throughout the country. In California, Tulare County has developed urban area boundaries for its eight incorporated cities and eighteen unincorporated communities through a general plan element adopted in 1974. Sacramento County has established urban service areas around its cities and unincorporated areas within the county in an attempt to maintain a rural environment outside of the boundary areas and limit the places in which the county must provide urban services.

The urban boundary policies of Fresno, Stanislaus, and Santa Clara counties are as follows:

Fresno County: States that all new urban development should take place within cities. Applies equivalent of AE-20 zone to areas within unincorporated spheres of influence not yet suited for development. Applies holding zone to undeveloped or underdeveloped properties suitable for annexation. Refers project applicants within a half mile of city limits to cities for annexation. Considers applications over a half mile from cities under certain conditions. Contains distinct spheres of influence and planned expansion areas.

Stanislaus County: Designates "urban transition areas" defined as being "within reasonably projected limits of urban expansion" and zones them to an exclusive agricultural zone. As a condition of urban development, requires that property be annexed either to a city or to a special district that provides community sewer and/or water. Limits rural residential development to properties beyond the ultimate service area of a city or special district.

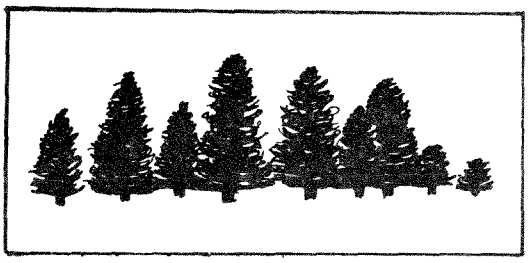
Santa Clara County: States that urban development should occur only within urban service areas and under city jurisdiction; also states that urban service areas should include only areas suited for urban development. Considers applications for development within unincorporated urban service areas only if application for annexation to a city was rejected, and then only under certain conditions. Also limits rural residential development to areas outside city urban service areas.

References

1. American Planning Association, *Urban Growth Management Systems*, Planning Advisory Service Report Nos. 309 and 310 (Washington, D.C., 1975).

2. Robert A. Johnston, Seymour I. Schwartz, and Thomas L. Klinkner, *General Plan Implementation: The Growth-Phasing Program of Sacramento County* (Davis, Calif.: Institute of Governmental Affairs, University of California, April 1977).

3. Tulare County, *Urban Boundaries Element of the Tulare County, California, General Plan* (1974).



WOODLANDS PROTECTION ZONING

Definition

A means of assuring that developments in wooded environments will be compatible with the environment's trees and associated flora and fauna. Woodlands protection zoning recognizes the value of woodlands to a community in providing a rich and varied environment, watersheds and soils, noise buffers, and a continuous supply of pure oxygen. Poorly planned woodland development can lead to increased erosion and siltation, deterioration of water quality, loss of landscape diversity, increased danger of flooding, and reduced recreational opportunities.

How It Works

1. The community prepares an ordinance encompassing a set of standards designed to preserve the character and purpose of its woodland areas and provide for safe development. These standards are specific to the locality and depend on many factors, including types of woodland, topography, community size, and location of woodlands within the community. The performance or specific standards of the ordinance may address topics such as the following:

   (a) Density of use. Typically a lower density of use is preferred in woodlands.

   (b) Intensity of use. Less intense uses, primarily residential, are preferred in woodland areas.

   (c) Hazard protection. The primary hazard associated with woodlands is fire. Standards can address fire-retardant roofing, water supply, and clear areas around structures.

   (d) Woodland characteristics. Standards relate to limits on mature tree removal, maximum building coverage, height limits, control of non-native landscape materials, building materials, and access.

2. The method by which woodlands protection zoning is applied varies by community. The two most common methods are:

   (a) Establishment of woodlands protection zoning as an "overlay" zone in which particular standards are applied to development in designated woodland areas in addition to the standards contained in the underlying zoning district.

   (b) Establishment of a woodland protection zone in which the standards for the zone constitute the sole criteria for development in the geographic area covered by the zone.

3. The requirement of planned unit development and the clustering of residential units are appropriate ways to deal with development activity in wooded (or other environmentally sensitive) areas.

4. Woodlands protection zoning can be administered in the same manner as traditional zoning. Development proposed in woodlands is designed to comply with the performance standards, and review of the proposal can be administrative, by special committee, or by planning commission.

Potential Benefits

1. Preserves woodland areas as a community resource.

2. Provides safety for development in woodlands.

3. Permits flexibility and innovation in project design.

4. Encourages development that is compatible with the natural environment.

Limitations

1. May be cumbersome to administer if adopted as an overlay zone in addition to other zoning regulations.

2. Adequate data is required for the establishment and enforcement of woodlands protection standards, including a natural resources inventory of the woodlands area and soil and topographical information. An applicant for development in a woodland area can be required to provide much of the needed information so that compliance with the standards can be measured.

Legal Status

Accepted. Local regulations or conditions imposed on development are, of course, on surer legal footing when they are intended to respond to environmental, aesthetic, or other concerns expressed in the general plan.

Interrelationships

Stream/creek zoning, hillside/slope zoning, cluster development, planned unit development, conditional rezoning, performance zoning.

Experience

Limited. There appear to be few ordinances exclusively devoted to woodlands protection, although hillside/slope zoning laws often contain provisions designed to protect wooded hillside environments (for example, the slope and hillside development regulations of the city of Larkspur). The city of Monterey has adopted environmental resource policies and standards that are applied in reviewing applications for development in "valuable wildlife and plant habitat" areas. Oakland County, Michigan, has developed a model woodland protection ordinance for its townships that allows compatible development through a permit procedure based on a set of performance standards. (A copy of the ordinance is printed in *Performance Controls for Sensitive Lands*, cited below.) Performance standards controlling development in wooded areas can also be found in planned unit development ordinances, such as this example from Lake Tahoe:

> All subdivisions shall be planned, designed, constructed, and maintained so that existing healthy trees and native vegetation on the site are preserved to the maximum extent feasible and are protected by adequate means during construction.

A more common--and more limited--approach to the saving of woodlands is the tree preservation ordinance. A typical example is the tree ordinance of the newly incorporated town of Paradise in Butte County. With certain exceptions, the ordinance prohibits the cutting down, destroying, or removing of "any tree [defined in the ordinance] from public or private property within the town limits without first having obtained a tree-cutting permit from the town manager."

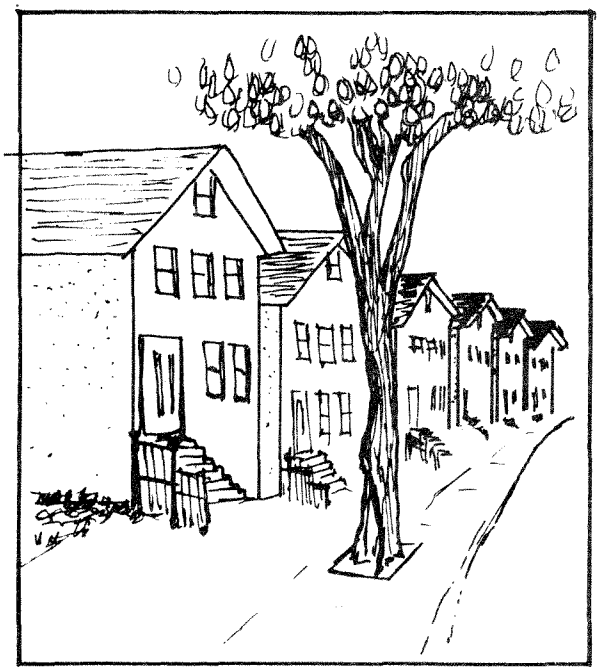
References

1. American Planning Association (APA), *Caring for the Land: Environmental Principles for Site Design and Review*, Planning Advisory Service Report No. 328 (Washington, D.C., June 1977).

2. APA, *Performance Controls for Sensitive Lands*, Planning Advisory Service Report Nos. 307 and 308 (Washington, D.C., June 1975).

3. City of Monterey, *Environmental Resource Policies and Standards*, Resolution No. 13.222 (November 1978).

4. Lane Kendig, *Performance Zoning*, (Chicago: Planners Press, 1980).



ZERO LOT LINE HOUSING

Definition

The placement of a single-family detached house against one of the side lot lines. This makes the side yard usable and requires less total land than when the house is centered on the lot, which can reduce the cost of housing. Privacy to adjacent units is insured by the prohibition of windows on the wall of the unit closest to the lot line.

How It Works

1. The zero lot line approach came into being in order to more efficiently utilize the smaller lot resulting from cluster development. Fifty- and fifty-five-foot-wide lots are common in zero lot line development and smaller lots are in use for two-story dwellings.

2. The most common way for communities to handle zero lot line housing is in planned unit developments. But, as with cluster development, zero lot lines can also be provided for in standard zones, either by right or as a conditional use.

3. Where the house is placed on the adjacent property line, easements are required to guarantee access to the lot line wall for maintenance. Sometimes developers place the home three to five feet from the adjacent property line in order to avoid having to provide access easements along the adjacent lot.

4. Under the Huntington Beach, California, zoning ordinance, the wall on the zero-foot yard setback must be constructed of maintenance-free, solid decorative masonry, and no portion can project over any property line.

5. The needs for a homeowners' association will depend upon whether common areas are included in the project; it will not be necessary if the zero lot line units are planned as a standard subdivision.

Potential Benefits

1. Can lead to lower development costs through more efficient development and lower per-unit land costs.

2. When combined with cluster development, allows excess yard space to be combined into usable open space.

3. Provides an alternative type of housing for those who do not want larger lots but still want the maximum of indoor-outdoor space, traditional streetside elevation, private ownership, and maximum privacy.

Limitations

1. Zero lot line housing is a relatively new approach, and it may take time before local decisionmakers and prospective home buyers fully understand the concept.

2. Normal higher density of a zero lot line project places greater importance on building design and landscaping (particularly of a low-maintenance character) in order to soften the impact of the higher density. Consideration must also be given to fire codes and noise abatement.

3. Access easements must be carefully written to identify the rights and obligations of each party.

4. Some expertise may be required to assess the quality of the site plan.

Legal Status

Accepted. The zero lot line is included in the Department of Housing and Urban Development's publication, *Minimum Property Standards for One- and Two-Family Units*, Sections 304-2.4 and 304-2.5.

Interrelationships

Planned unit development, cluster development, performance zoning.

Experience

In increasing use throughout the country. In California, zero lot line developments have been used, pursuant to local ordinance, in Huntington Beach, San Diego, Irvine, and Culver City. The city of Chico allows zero lot line housing in PUDs and is considering its use in standard subdivisions on 4,500-square-foot lots.

References

1. American Planning Association (APA), *Zero Lot Line Development*, Planning Advisory Service Memo 79-9, by Teresa Zogby (Washington, D.C., September 1979).

2. APA, *Zero Lot Line Development*, Planning Advisory Service Report No. 367 (Washington, D.C., March 1982).

3. David R. Jensen, *Zero Lot Line Housing* (Washington, D.C.: Urban Land Institute, 1981).

4. National Association of Home Builders, *Cost Effective Site Planning* (Washington, D.C., 1976) [Address: 15th and M St., N.W., Washington, D.C. 20005].

SOURCES OF INFORMATION AND ASSISTANCE

SOURCES OF INFORMATION AND ASSISTANCE

If truth be told, upper-level governmental agencies are not falling all over themselves in an effort to help local governments solve their planning problems, especially not in this period of reduced national and state budgets. There is--if you search for it--a good deal of published information concerning alternative techniques, but direct assistance with regard to plan development and the formulation of implementation strategies is hard to come by.

Under these circumstances, the best source of information and assistance in planning and land use control matters continues to be *other planners*. Most planners are proud of the innovations taking place in their communities and are more than willing to provide information about them, including copies of ordinances and implementation experiences. Using sources discussed below, local planning decisionmakers can learn of alternative approaches being tried elsewhere and write to or speak with the planner in charge concerning them.

Because small towns and rural areas are often limited financially in their ability to recruit trained staff personnel, shared programs are an excellent way of reducing the cost of hiring planning experts. Through the implementation of state-authorized *joint powers agreements*, local jurisdictions can contract with one another to pool their resources and share the services of a planner or planning consultant. For example, under a joint powers agreement the counties of Colusa, Glenn, and Tehama and their seven incorporated cities have formed the Tri-Counties Planning Agency. Each jurisdiction contributes to the tri-county fund, which is used to hire a planning consultant to assist all or some of the cities and counties with planning matters. Most recently, a consultant was hired to help the localities prepare their general plan housing elements. The Siskiyou County Association of Governmental Entities (SAGE) has in the past hired a planning consultant to help constituent localities with general plan preparation. The Central Sierra Planning Council (a council of governments made up of four counties and their cities) provides a "circuit rider" planner to assist member jurisdictions.

Additional sources of assistance are college interns participating in a planning, geography, public administration, or other internship program. As colleges try to provide more practical experience geared to career opportunities, students in a number of disciplines are being advised or required to seek governmental internships, either paid or unpaid. These internships can be performed in the summer months or during the school year, and college officials are often anxious to receive requests for interns from local officials. Internship assistance can probably be most useful in areas of data gathering; reviewing materials on alternative techniques; providing case studies of

their use in other communities; obtaining the views of professionals (such as planners and college faculty) with regard to particular problems; and, in some cases, actually developing techniques for the community.

California localities may also look to a number of public and private organizations for information and some technical assistance in developing alternative techniques or their necessary data bases:

Office of Planning and Research (OPR), 1400 Tenth Street, Sacramento, CA 95814 (916) 445-1114

This is the first place to which localities should turn. Although technical assistance can be provided only in limited areas (e.g., permit streamlining), OPR personnel are generally informed as to whether or not the information or assistance you seek is available and where it can be obtained. OPR district representatives work directly with local planning departments and are important contact persons. In addition to providing information and workshops for planners and commissioners, OPR regularly publishes materials of value to planning decisionmakers, including the following:

California Planning, Zoning, and Development Laws (annual editions)

Directory of California's Local Planning Agencies (updated annually)

Economic Practices Manual: A Handbook for Preparing an Economic Impact Assessment (revised edition in preparation)

General Plan Guidelines (September 1980; revisions to be completed by early 1983)

Land Use Litigation Newsletter (includes summaries of important land use cases and local government planning news; monthly)

In addition, the following reference guides are either presently available or scheduled for publication by OPR by early 1983:

A Guide to State Services (now available; a directory of assistance available to local governments; includes some twenty-one major categories from agriculture to transportation)

Agricultural Lands Conservation Guidebook (exact title not yet determined; the culmination of OPR's "Room to Grow" project)

Your Community's Future: A Citizen's Guide to the General Plan
(an introduction to the general plan for elected officials, planning commissioners, and citizens)

League of California Cities, 1400 K Street, Sacramento, CA 95814 (916) 444-5790

Every city is a member of this organization, whose most valuable resource may be its extensive municipal reference library. Of major interest to planners is the large collection of ordinances on file that communities often use as models when drafting their own laws. The library also contains more than 100 newsletters, bulletins, and other periodicals, as well as publications from other municipal leagues. Most of these materials--especially ordinances--are available to member cities on a two-week loan basis.

California Building Industry Association, 1225 8th Street, Sacramento, CA 95814 (916) 443-7933

A trade association representing builders; it publishes a number of planning-related materials (e.g., density bonus, fiscal impact analysis) and is willing to provide technical assistance in various areas of development.

University of California Cooperative Extension Office

Formerly Agricultural Extension, offices are located in each county, where their mission is to provide educational services to local residents. Expert advisors are prepared to provide information on soil conditions in the county, including series and classification data; cropping patterns within the county, including information as to how various crops will do in particular soils; carrying capacity of grazing lands; and production cost and marketing information on particular crops.

Western Rural Development Center, Oregon State University, Corvallis, OR 97331 (503) 754-3621

A regional center cooperating with western land grant universities, it has an extensive publication list. The center's Coping with Growth series, for example, contains a number of short and useful papers, written for the layperson, on the fiscal impacts of rural growth and how to measure and deal with them.

There is a new planning organization, membership in which may prove to be of value to small town and rural planners. It is the Small Town and Rural Planning Division of the American Planning Association (APA). The division was formed by APA members unhappy with that organization's apparent lack of concern with planning issues in non-metropolitan areas. The division publishes a newsletter and is presently organizing policy, education, and technical assistance committees. With sufficient membership and some aggressive leadership, it could become an important information and communications link among planners in small town and rural settings.

Finally, along with the reference materials included in the discussion of each of the alternative techniques, two additional sources may be useful to individuals interested in innovative approaches to controlling land use:

National Agricultural Lands Study, *The Protection of Farmland: A Reference Guidebook for State and Local Governments* (Washington, D.C.: U.S. Government Printing Office, 1981)

This is a comprehensive reference guide to more than a dozen programs and techniques presently being used to protect agricultural land. The 284-page guidebook documents the experience that state and local governments have had with each of these approaches and comments on their long- and short-term effectiveness.

The Western Planner, P.O. Box 127, Terry, Montana 59349

In its third year of publication, this journal, published ten times a year--is full of practical ideas and information on established and innovative planning techniques, citizen participation, planning education, and land use policymaking at local and state levels. The journal is sponsored by state planning associations and APA chapters in seven mountain and plains states, and much of its contents will be of interest to planning decisionmakers elsewhere as well. Individual subscriptions to the journal are ten dollars a year.

We would appreciate any comments you may have regarding this guidebook, particularly information about the included techniques and additional ones that would be of value to small cities and rural areas. Please address your comments to:

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